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U.S./MEXICAN TRUCKING: SAFETY AND THE CROSS-BORDER DEMONSTRATION PROJECT

(110–16)

HEARING

BEFORE THE

SUBCOMMITTEE ON
HIGHWAYS AND TRANSIT

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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March 13, 2007

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Highways and Transit

FROM: Subcommittee on Highways and Transit Staff

SUBJECT: Hearing on U.S.-Mexican Trucking: Safety and the Cross-Border Demonstration Project

PURPOSE OF THE HEARING

The Subcommittee on Highways and Transit is scheduled to meet on Tuesday, March 13, 2007, at 1:00 p.m. to examine the current status of cross-border trucking operations between the United States and Mexico, and to assess safety issues surrounding a U.S. Department of Transportation (DOT) demonstration project that will allow 100 Mexico-domiciled motor carriers access to U.S. roads beyond the commercial zone, and allow 100 U.S. motor carriers access to Mexican roads.

BACKGROUND

DOT Demonstration Project

On February 23, 2007, at a press conference in El Paso, Texas, Secretary of Transportation Mary Peters announced the start of a demonstration project, or pilot program, that would permit 100 trucking companies, selected by DOT, to conduct long-haul, cross-border operations. The initiation of the pilot program followed an announcement in Monterrey, Mexico that the U.S. and Mexico had reached an agreement for U.S. inspectors to conduct safety audits on-site in Mexico. DOT has long viewed this as the final step to opening the border.

The Federal Motor Carrier Safety Administration (FMCSA) has received approximately 860 applications to date from Mexico-domiciled motor carriers seeking long-haul operating authority in the U.S. Of these applicants, the Department has apparently already narrowed the pool down to 160

companies, of which they will select the 100 carriers to participate in the pilot program.[1] The operators in the program will be granted authority to continue past the border zone to make international deliveries, as well as pick up loads to transport from a point within the U.S. to Mexico. They will not be permitted to provide domestic point-to-point transportation service within the United States.

The pilot program is supposed to provide reciprocal access for 100 U.S. companies to operate in Mexico. However, to date, FMCSA has received only one or two applications from U.S. firms seeking this authority. The pilot program will not grant long-haul operating authority to motor carriers that transport hazardous materials, and it would not include buses or any motor vehicles carrying passengers.

According to Secretary Peters, Mexican trucks and their drivers will be required to meet all U.S. safety requirements before they will be granted authority to operate beyond the border zone. DOT estimates that conducting the initial safety audits and validation of insurance will take approximately 60 days. The pilot program will not officially begin until the first Mexico-domiciled motor carrier is granted long-haul operating authority.

Commercial Motor Vehicles at the U.S.-Mexico Border

Currently, Mexico-domiciled motor carriers are only permitted to operate in special commercial areas along the U.S.-Mexico border.[2] These "border zones," narrow commercial strips that range from three to 20 miles wide, are found in California, Arizona, New Mexico, and Texas. In 2005, DOT reported 4.7 million truck crossings into the U.S. from Mexico. Of these crossings, 68 percent occurred at 11 border crossing points in Texas, 24 percent were at five crossings in California, 7 percent were at six crossings in Arizona, and one percent occurred at two crossings in New Mexico. There were 13,957 active Mexico-domiciled motor carriers registered with FMCSA in 2005, which employed 41,101 trucks ("power units") and 33,067 commercial drivers.

In 2005, commercial trucks carried over $491 million, or 62 percent, of the total value of NAFTA merchandise trade, or U.S. trade with Canada and Mexico, according to the Bureau of Transportation Statistics. Total U.S.-Mexico trade transported by truck reached $196 billion in the same year, a six percent increase from 2004. This represents 67 percent of all U.S.-Mexico trade in goods, in terms of dollar value.

The majority of truck cargo crosses into the U.S. from Mexico by way of short-haul "drayage" operations. Mexican drayage firms provide connecting service between long-haul Mexican carriers and long-haul U.S. trucking companies, picking up loads on the Mexican side of the border and dropping off goods at transfer facilities in the commercial zone in the U.S. Because of the prevalence of drayage operations, involving the same trucks crossing back and forth many times

[1] According to DOT written materials, the Department began working on the development of the pilot program with its Mexican counterparts in 2004.

[2] There are a very small number of Mexican motor carriers that are exempt, and have been allowed to operate interstate in the United States for over 20 years. This handful of companies was engaged in long-haul operations prior to the moratorium enacted in 1982.

a day, the number of crossings is higher than the number of distinct Mexico-domiciled trucks that cross into the U.S.

Implementation of NAFTA Trucking Provisions

The North American Free Trade Agreement (NAFTA) was signed on December 17, 1992 and the agreement took effect on January 1, 1994. The surface transportation provisions of NAFTA removed restrictions on cross-border truck and bus service. Specifically, the agreement required the U.S. to allow truck traffic from Mexico to operate in states along the border by December 18, 1995, and required reciprocal access for U.S. carriers to Mexican border areas. Under the implementation timeline, the border was to be fully opened by January 1, 2000, meaning that Mexican trucks could travel freely on U.S. roads beyond the border zone.

As a provision of NAFTA, the U.S. retained the right to continue a moratorium on processing Mexican-owned bus and truck company applications for authority to operate in the U.S. This authority was established in the 1982 Bus Regulatory Reform Act (BRTA). In 1995, President Clinton, under this authority, delayed the first phase of NAFTA implementation. The delay was due in part to reports of egregious safety violations by Mexican motor carrier operations, their vehicles, and their drivers, and concerns over whether opening the border would adversely impact safety on U.S. roads. As a result, trucks entering from Mexico continued to be limited to the commercial zones along the border.

The border remained closed to long-haul operations, but bilateral talks between the U.S. and Mexico on safety standards and requirements continued. In 2000, the Government of Mexico requested the formation of an arbitration panel to review whether the U.S. was justified in maintaining the moratorium on processing applications. The arbitration panel issued its findings in February 2001, and concluded that an outright refusal to process the applications of Mexican motor carriers was a breach of the obligations of the U.S. under NAFTA. However, the panel found that the U.S. could impose more stringent requirements on Mexico-domiciled operations.

Congressional Action on NAFTA Trucking Provisions

In response to the findings of the arbitration panel, the Bush Administration announced its plans to open the border to truck and bus traffic. The plan met with strong, bi-partisan opposition in Congress. On December 4, 2001, Congress passed the FY 2002 Department of Transportation and Related Agencies Appropriations Act (P.L. 107-87). Section 350 of this Act prohibited DOT, and more specifically FMCSA, from using funds to review or process applications of Mexican motor carriers seeking long-haul operating authority until 22 preconditions and specific safety requirements were met. Pursuant to Section 350, FMCSA is required to:

- Conduct a safety examination of every motor carrier before the carrier is granted conditional authority to operate beyond the commercial zones, and must include: verification of a drug and alcohol testing program; verification of compliance with hours-of-service; proof of insurance; a review of the carrier's safety history; an inspection of the commercial vehicles to be used in the U.S.; verification of drivers' qualifications, including commercial drivers'

licenses; and verification of safety oversight practices. The Act required on-site safety examinations in Mexico for 50 percent of truck traffic in any year.

- Conduct a full safety compliance review of a carrier, consistent with the safety fitness evaluation procedures under U.S. regulations. The carrier must achieve a satisfactory rating before being granted permanent operating authority beyond the border zone. On-site compliance reviews must be conducted for 50 percent of all Mexican motor carriers.
- Electronically verify the validity of all commercial drivers' licenses at the border for vehicles hauling hazmat, and check 50 percent of all Mexican commercial motor vehicles at random.
- Assign a distinct Department of Transportation number to each Mexican motor carrier operating beyond the commercial zone.
- Ensure certified inspectors conduct Level I inspections of all commercial vehicles that do not display a valid Commercial Vehicle Safety Alliance inspection decal.
- Equip the ten highest-volume border crossings with weigh-in-motion (WIM) systems.
- Verify that Mexican motor carriers have proof of valid insurance with an insurance company licensed in the United States.
- Prohibit motor carriers from entering the U.S. at commercial border crossings, unless a certified motor carrier safety inspector is on duty and adequate capacity exists to conduct inspections.
- Prohibit motor carriers from carrying quantities of hazardous materials requiring placards beyond the commercial zone until drivers meet substantially the same requirements as United States drivers carrying such materials.
- Issue regulations addressing minimum requirements for foreign motor carriers; improving training and certification of safety auditors; ensuring adequate Federal and State motor carrier inspectors at the border; and prohibiting operators who are found in the U.S. illegally from being granted operating authority.

In May 2002, a coalition including Public Citizen, the Environmental Law Foundation, the International Brotherhood of Teamsters, the California Federation of Labor, and the California Trucking Association filed a lawsuit against FMCSA over claims that the Bush administration failed to consider the environmental impacts of opening the U.S. border to Mexico-domiciled trucks. The Ninth U.S. Circuit Court of Appeals ruled in favor of the plaintiffs and barred implementation of the treaty's land transportation provisions.

In June 2004, the U.S. Supreme Court decision overturned the Court of Appeals opinion and ruled that the FMCSA did not have to do a detailed environmental impact study of the opening of the border.

Safety Concerns: DOT Inspector General Audits

The FY 2002 Appropriations Act also gave the DOT's independent Office of Inspector General (OIG) a major oversight role and required the OIG to conduct a review of border operations to verify that eight specific criteria had been met. These eight provisions addressed:

hiring and training of FMCSA inspectors; the operation of inspection facilities at the border; the sufficiency of information infrastructure in Mexico and the accuracy of data collection; the adequacy of enforcement capacity in the U.S.; and policies to ensure Mexican carriers comply with hours-of-service requirements in the U.S. The OIG completed this review within 180 days, as required by the Act, and reported its findings on June 25, 2002. Specifically, the 2002 OIG audit concluded that although FMCSA has made "substantial progress" toward meeting the preconditions set out in Section 350, "FMCSA has a number of important actions in process and planned that will require aggressive follow-through to meet the Act's requirements."[3]

Upon review of the audit, then-Secretary of Transportation Mineta certified in November 2002 that opening of the border does not pose an unacceptable safety risk to the American public. This certification was required under the FY 2002 Act prior to the border being opened. Despite this certification, ongoing litigation over the environmental impacts of NAFTA prohibited opening the border.

The OIG continued its oversight and conducted follow-up audits as required by the Appropriations Act, which were issued on May 16, 2003, and January 3, 2005. As of the 2005 audit, numerous actions, including regulations to be issued by FMCSA and the Transportation Security Administration, had not been completed. The OIG identified the following uncompleted actions required by Section 350 that, until addressed, would have prevented DOT from processing applications for long-haul operating authority by Mexican carriers[4].

On-Site Reviews: The basic international agreement between the U.S. and Mexico to permit on-site safety reviews of Mexico-domiciled motor carriers seeking long-haul U.S. operating authority has not been achieved, and on-site inspections of motor carrier companies had therefore not been conducted.

Motor Carrier Data: Inaccurate or incomplete data on both commercial motor vehicles and drivers continued to be submitted by Mexico-domiciled motor carriers.

Drug and Alcohol Testing: Mexico continued to have problems developing an adequate commercial driver drug and alcohol testing system. This includes the fact that Mexico does not have certified labs and protocols in place at collection sites for Mexican motor carriers to use in lieu of U.S. labs.

Hazmat Background Checks: Section 350 requires drivers of vehicles carrying placardable quantities of hazardous materials to "meet substantially the same requirements as United States drivers carrying such materials." U.S. drivers hauling hazardous materials must undergo a criminal background check, pursuant to the USA Patriot Act (Public Law 107-56), to receive a hazmat endorsement on their commercial driver's license. Section 7105 of the Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users (SAFETEA-LU)(P.L. 109-59) further prohibited a commercial motor vehicle operator registered to operate in Mexico or Canada to transport hazardous material in the U.S. "until the operator has undergone a background records check similar to the background records check required for commercial motor vehicle operators licensed in the

[3] OIG Report Number MH-2002-094, *Implementation of Commercial Vehicle Safety Requirements at the U.S.-Mexican Border* (June 25, 2002).
[4] OIG Report Number MH-2005-032, *Follow up Audit of the Implementation of the North American Free Trade Agreement's (NAFTA) Cross Border Trucking Provisions* (January 3, 2005).

United States to transport hazardous materials in commerce." The Transportation Security Administration (TSA) has issued final regulations governing the U.S. background check program and drivers hauling hazmat are required to undergo this assessment. Given that the U.S. and Mexico are governed by different criminal codes and have different systems of record-keeping for convictions, serious impediments exist to implementing a comparable background check program in Mexico to identify drivers who pose a security risk.

In a statement at the news conference unveiling the pilot program in El Paso, Texas, Secretary Peters stated that all 22 Congressional mandates had been met and that "the Department's independent Inspector General has certified that each and every one of them has been met." The Inspector General was only required to review eight specific provisions and verify that FMCSA had taken sufficient action in those areas, which he has done.

The investigations and analysis for an additional follow-up audit have been completed and the OIG expects to release a report next month. However, several findings were revealed in the testimony of Inspector General Calvin Scovel on March 8, 2007, at a hearing before the Senate Committee on Appropriations, Subcommittee on Transportation, Housing and Urban Development, and Related Agencies. In his written testimony, the Inspector General confirmed that two areas necessary for Section 350 compliance require additional improvement: the quality of data used to monitor Mexican commercial driver traffic convictions in the U.S., and the adequacy of capacity to inspect buses at crossings.

Specifically, the OIG evaluated the 52nd State System, a database that allows U.S. officials to disqualify Mexican commercial drivers operating in the U.S. "for the same offenses that would lead to disqualification of a U.S. commercial driver." Serious data problems were found in this system: for instance, that a sharp decline in the number of convictions of Mexico-domiciled motor carriers in Texas was not due to more law-abiding drivers. Rather, the state of Texas "had stopped providing conviction information to the database."[5]

The testimony highlighted two additional issues that require closer attention due to the potential safety implications. First, although carriers applying for long-haul operating authority will be required to have a drug and alcohol testing program, ensuring the integrity of testing will require careful monitoring of the program. Second, FMCSA must issue further guidance and finalize policies to ensure that Mexico-domiciled vehicles comply with Federal motor vehicle manufacturing safety standards.

[5] Written testimony of Calvin L. Scovel, "Status of Safety Requirements for Cross-Border Trucking with Mexico under NAFTA," before the Committee on Appropriations, United States Senate (March 8, 2007).

WITNESS LIST

PANEL I

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Federal Motor Carrier Safety Administration
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*accompanied by Jeffrey N. Shane,
Under Secretary for Policy, U.S. Department of Transportation

The Honorable Calvin L. Scovel, III
U.S. Department of Transportation
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Ms. Jackie Gillan
Advocates for Highway & Auto Safety
Vice President
Washington, D.C.

Major Mark Rogers
Texas Department of Public Safety
State Commercial Vehicle Safety Coordinator
Austin, TX

U.S./MEXICAN TRUCKING: SAFETY AND THE CROSS-BORDER DEMONSTRATION PROJECT

Tuesday, March 13, 2007,

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT,
Washington, DC.

The subcommittee met, pursuant to call, at 1:00 p.m., in Room 2167, Rayburn House Office Building, the Honorable Peter DeFazio [chairman of the subcommittee] presiding.

Mr. DEFAZIO. The Subcommittee will come to order.

First off, I understand that we will be joined by Representative Eddie Bernice Johnson, who is not a member of the Subcommittee. But I would ask unanimous consent she be allowed to sit with the Committee. Hearing no objection, that will be allowed on a timely basis.

Today's hearing of the Subcommittee on Highways and Transit is to examine the issue of a pilot program to allow 100 Mexican trucking companies free access to the entire continental United States. I have a number of grave and ongoing concerns about this program that hopefully will be in part addressed today. Then again in part, they may not, and it may require further action by this Committee.

After having a meeting yesterday pertaining to this hearing, just out of idle curiosity I went online to Google and I Googled the word "mordedura," which means the bite, which means essentially bribes. And as someone who has long been a student of Mexico and speaks very little and very bad Spanish, but understands a good deal about the country, they do not have the same system and respect for laws as we do, they have different traditions. In that country, it is rampant and widespread among minor and not so minor government officials that bribery is a way of doing business.

I have concerns that if we are accepting a paper program, a paper program that certifies drug and alcohol testing, a paper program that certifies the hours of service, that we are accepting their commercial driver's licenses, that if we are basing it on a government-to-government negotiation, with the understanding that they have the same sort of enforcement of laws down to those levels in the bureaucracy, I think we are sadly mistaken. So that leads me to believing that we need to have some additional levels of trust. And trust would come through a rigorous pilot program. The program is already skewed by cherry-picking the Mexican trucking companies.

But we want to know that even though we are cherry-picking and even though hopefully they will have their best drivers and trucks online, that we are checking to see that they are indeed truly conforming. I would hope that testimony is delivered today that relieves some of my anxiety in those areas.

Then beyond that, quite truthfully, I have an interesting advisory from the State Department, there is some concern expressed on the Senate side that Mexico isn't immediately giving reciprocity to American trucking companies which is of course fairly extraordinary. But secondly, American trucking companies don't want to drive in Mexico, again, the problem of lack of laws and enforcement of laws. There is an advisory from the State Department saying commercial trucks from the U.S. should stay out of Mexico, you are likely to be hijacked or otherwise shanghaied down there.

So this just sort of reinforces my view, which goes to some of these other regulatory regimes that we are adopting. But ultimately what I see really is the agenda here, and I must disclose I voted against NAFTA, is that this is a way to displace American labor. Yet once again, with marginal if any benefit to American consumers, by some minuscule reduction in the price of cheap goods that were manufactured in China or Mexico and then imported into the United States to a middle class that doesn't exist any more.

Having a well-paid, well-trained, well-regulated trucking industry and truck drivers benefits our society as a whole. And what I see as the grand vision here is that we will develop ports in Mexico, the junk will be made in China, shipped there, we can avoid the longshoreman's union and not pay a living wage to people unloading the ships. Then we can load it onto trucks that will drive it from there into the United States with workers who are again not paid a living wage and may have a host of other problems inherent in that.

So that is sort of the longer term vision to be realized here. I am not inclined to support this in any way, but I am going to be particularly rigorous in looking at protecting public health and safety, because I am not going to sacrifice public health and safety for a non-existent economic benefit.

With that, I would recognize the Ranking Member.

Mr. DUNCAN. Thank you, Mr. Chairman, for calling this hearing today to listen to testimony on the Department of Transportation's new cross-border demonstration project. The safety of trucks coming into the U.S. across the Mexican border has been of concern and it is one that has been of concern to this Committee for quite a few years. Since the opening of the border to truck traffic appears eminent, it is very important for this Committee to stay engaged and ensure that the border opening is handled properly with the safety of American motorists as our top priority.

At the time NAFTA was passed, a sizeable majority of people in my district were in favor of it. I feel certain that if NAFTA was up today, a sizeable majority would be opposed to it. I am concerned that treaties like NAFTA essentially want to do away with our borders and with Mexico and Canada and merge us into a North American Union. I am greatly opposed to this and want to protect U.S. political and economic sovereignty.

Although I do have concerns about NAFTA, it is the law. It is important that the U.S. follow international law, especially laws we have entered into willingly. But compliance with NAFTA does not necessarily mean we open the border without any scrutiny of the process.

This Committee should actively review DOT's plan to open the border and should revisit the demonstration plan once it has been initiated to evaluate its effectiveness. It is imperative that Mexican trucks and truck drivers be as safe as U.S. trucks and drivers. And safety is really the only thing that this Subcommittee can fairly look at, although I do have concerns like the Chairman about American jobs.

It is of concern to me, that as I understand it, there's about 160 or so Mexican trucking companies who are already interested in this, but only, I understand, two American trucking companies wanting to go the other way. It seems to me if we are going to do something like this, it needs to be done in a fair way, I would say a tit for tat way. And we should let one Mexican trucking company in for every American trucking company that wants to go and gets permission to go into Mexico.

I know, too, that there legitimate safety concerns. I have had complaints over the years about Mexican drivers, uninsured drivers who have hit and seriously injured constituent of mine. My home State of Tennessee recently put in a requirement that while not requiring people to be necessarily fluent in English, they have included a test to make sure that drivers can at least read the road signs. So we need to think about things like that as well.

But I thank you very much for calling this hearing. It is important that we look into this from every aspect that we are allowed to do. Thank you.

Mr. DEFAZIO. I thank the gentleman for his statement. Are there other opening statements?

Yes, Mr. Holden.

Mr. HOLDEN. Just briefly, Mr. Chairman, I wanted to thank you for conducting this hearing today. I look forward with interest to hearing from our witnesses.

A few years ago, when Mr. Petri was chairman of this Subcommittee, I traveled with him and a few other members to San Diego and to Laredo and was just absolutely shocked at the failure rate of the truck drivers and the trucks coming into the Country with lack of insurance, lack of conformation of registration. And in the maintenance failures of the brake systems and numerous other aspects of the vehicle.

So it was an absolute failure when I was on the ground looking at it a few years ago, and I am just curious if there has been any progress made since then. So Mr. Chairman, thank you for conducting this hearing.

Mr. DEFAZIO. I thank the gentleman for his succinct statement.

Mr. Coble?

Mr. COBLE. Thank you, Mr. Chairman, Mr. Duncan. I appreciate your calling this hearing. I will say very briefly, Mr. Chairman, this hearing has generated much interest in my district. I have received several telephone calls expressing concern about this. I appreciate your having called the hearing.

Mr. DEFAZIO. Thank you, Mr. Coble. Mrs. Napolitano.

Mrs. NAPOLITANO. Ditto on all the remarks, Mr. Chairman. California has always had a longstanding issue with allowing trucks into our area. I look forward to clarification of a lot of the issues at this hearing.

Thank you, Mr. Chair.

Mr. DEFAZIO. I thank the gentlelady for her extraordinarily succinct statement. I see no other opening statements. We can proceed with the witnesses.

I believe either Mr. Hill or Mr. Shane or are both going to testify? Mr. Hill, okay, and you are doing backup today, is that it?

Mr. SHANE. Yes, Mr. Chairman.

Mr. DEFAZIO. Mr. Hill.

TESTIMONY OF THE HONORABLE JOHN H. HILL, ADMINISTRATOR, FEDERAL MOTOR CARRIER ADMINISTRATION, ACCOMPANIED BY: JEFFREY N. SHANE, UNDER SECRETARY FOR POLICY, UNITED STATES DEPARTMENT OF TRANSPORTATION; THE HONORABLE CALVIN L. SCOVEL, III, INSPECTOR GENERAL, UNITED STATES DEPARTMENT OF TRANSPORTATION

Mr. HILL. Thank you, Mr. Chairman.

Chairman DeFazio, Ranking Member Duncan and members of the Subcommittee, thank you for inviting me today to discuss the Department of Transportation's demonstration project to implement the trucking provisions of the North American Free Trade Agreement, NAFTA. I am pleased to describe to you what the Department has done to implement Section 350 of the fiscal year 2002 Appropriations Act and the additional steps we have taken to ensure that we safeguard the safety and the security of our transportation to work even as we strengthen trade with a close neighbor and important trading partner.

As Secretary Peters announced on February 23rd, the U.S. and Mexican governments have agreed to implement a limited, one-year demonstration project to authorize up to 100 Mexican trucking companies to perform long-haul international operations within the U.S. and 100 U.S. companies to do the same in Mexico for the first time ever. These companies will be limited to transporting international freight and will not be authorized to make domestic deliveries between U.S. cities. It is also important to note in the demonstration project there will be no trucks authorized to transport hazardous materials, no bus transportation of passengers, and no authority to operate longer combination vehicle on U.S. highways.

The program will meet, and in some cases exceed, the safety requirements that Congress included in Section 350. For example, Section 350 requires the Federal Motor Carrier Safety Administration to perform 50 percent of all pre-authority safety authority audits of Mexican trucking companies at the company's headquarters in Mexico. In fact, for the duration of this program, FMCSA will perform 100 percent of these audits on site. That means the U.S. inspectors will have eyes on and hands on access to all of a company's records, equipment, and personnel as we are determining whether that company has the systems in place to meet Section 350 requirements.

And the members of this Subcommittee know that Section 350 includes a very comprehensive set of requirements to ensure that long haul Mexican trucks and drivers operate safely in the U.S. For example, Section 350 requires all Mexican drivers to have a valid commercial driver's license, proof of medical fitness, and verification of compliance with hours of service. They must be able to understand and respond in English to questions and directions from U.S. inspectors must undergo drug and alcohol testing, and cannot be under the influence of drugs or alcohol.

All trucks must be insured by a U.S.-licensed insurance company and must undergo a 37 point safety inspection at least once every 90 days. Section 350 also requires all long haul Mexican trucks to have a distinct DOT number, so that they will be easy to identify by Customs and Border Protection officers, FMCSA, State inspectors and more than 500,000 State and local law enforcement officials. We are working closely with our partners in the States to ensure they understand the parameters of the program and are able to enforce the law effectively.

Finally, in addition to the Federal Motor Carrier safety requirements, the Mexican trucks operating in the demonstration project will be required to adhere to the same State requirements as U.S. trucks, including size and weight requirements, and pay the applicable fuel taxes and registration fees. It is also important for us to bear in mind that trucks from Mexico have always been allowed to cross our southern border. Every day drivers from Mexico operate safely on roads and major U.S. cities like San Diego, El Paso, Laredo, and Brownsville. Every day, Federal and State inspectors ensure trucks are safe to travel on our roads. And our records show that Mexican trucks currently operating in the commercial zone are as safe as the trucks operated by companies here in the United States.

We have developed this limited program to demonstrate to you, the Congress, and to the traveling public that we will be able to implement Section 350 successfully to allow Mexican trucks to operate safely beyond the commercial zone. Thank you for the opportunity to appear before you today. I look forward to working with you to create new opportunities, new hope, and new jobs north and south of the border, while continuing to ensure the safety of North American roads. Under Secretary Shane and I would be happy to answer your questions.

Mr. DEFAZIO. Thank you for your testimony.

With that, we would turn to the Inspector General, Mr. Scovel.

Mr. SCOVEL. Mr. Chairman, Ranking Member Duncan and members of the Committee, thank you for the opportunity to testify today as you evaluate the safety of cross-border trucking with Mexico under the provisions of NAFTA. We appreciate the Committee's interest in the demonstration program that will expand the reach of Mexican cross-border trucking.

Our role, as established in the fiscal year 2002 Transportation Appropriations Act, is to review eight specific criteria and provide the results to the Secretary. We will continue to work with the Department as the demonstration program progresses, consistent with our responsibility to preserve our independence and objectivity as we conduct our annual audits under the fiscal year 2002

Act and as we respond to your requests that we audit the demonstration program.

We have issued seven reports on border safety since 1998 and will issue an eighth report shortly. Today I would like to address four key issues concerning cross-border trucking with Mexico. First, we have seen significant progress in border safety in recent years. We have visited 27 large and small border crossings, some multiple times, and found that FMCSA had in place the staff, facilities, equipment and procedures necessary to substantially meet the criteria set forth in the Act.

For example, the number of Federal Motor Carrier enforcement personnel, including inspectors, has jumped almost 20-fold since 1998, from 13 to 254. In addition, the number of Mexican trucks taken out of service after inspection declined by about half, from 44 percent to 20 percent, a rate comparable to that of American trucks. Further, all States can now take enforcement action when necessary against Mexican trucking companies, a significant improvement over 2003, when only two States had this capability.

Second, we have concerns about the completeness of the data in the so-called 52nd State system. This is a data repository set up by FMCSA for traffic convictions of Mexican commercial drivers while operating in the United States, and is needed to allow U.S. officials to bar Mexican drivers from operating here for the same offenses that would bar U.S. drivers. We have found reporting problems and other inconsistences with this system at the four border States.

In one example, data reported by Texas showed a steep decline in traffic convictions between January and May 2006. When we brought this to FMCSA's attention, it turned out that Texas had stopped reporting this data. After developing an action plan with FMCSA, Texas subsequently eliminated a backlog of some 40,000 Mexican commercial traffic convictions.

To its credit, FMCSA has acted quickly to work with the States to correct these issues. Strong follow-up action or interim solutions will be required, however, especially as Mexican carriers begin to operate more extensively beyond the border States.

Third, we have two observations regarding FMCSA's demonstration program expanding cross-border trucking with Mexico based on our past and current work. One, FMCSA will need to ensure that it has an effective screening mechanisms at border crossings. Hundreds of trucks enter the Country from Mexico each day at large volume crossings. While the law requires 50 percent of Mexican driver's licenses to be checked, FMCSA has announced a standard of every truck, every time. This will not always be easy. A driver must first be identified, in this case by an X, appearing after the DOT number that is present on the side of all interstate trucks. In instances that we have observed, the driver is then taken out of line for a license check by FMCSA staff. This process could be streamlined if FMCSA enforcement personnel work collaboratively with the Customs and Border Protection Service.

Two, FMCSA will need clear objectives and measures of success. In order to assess performance and risk, the agency must have meaningful criteria, especially if it wants to consider opening the border to greater numbers of carriers in the future. To date, we

have seen no details on how the program's success will be evaluated.

In summary, Mr. Chairman based on our work over the past eight years, we see continual improvement in the border safety program along with a willingness by the parties involved to solve problems once identified. Some areas need and are receiving the proper attention. We will continue to audit the cross-border trucking program, report on its progress and address the specific concerns of this Committee.

This completes, my statement. I would be happy to answer any questions that you or other members of the Committee may have at this time.

Mr. DEFAZIO. Thank you. Thanks for your report and your testimony.

I will begin the questions with Mr. Hill. I guess my first question is quite broad, but you're referring to this as a pilot program. It has to do with safety of motor carriers, commercial motor vehicles, driver safety. My reading, and I am not a lawyer, but by my reading of the law this seems to have been anticipated in the Transportation Act for the 21st Century, TEA-21. It sets out requirements to follow if you are conducting a pilot.

How is it that the Administration feels they are exempt from this law? Because this so-called pilot does not meet those guidelines. It is our understanding nothing has been published in the Federal Register, no public comment except on individual carriers from Mexico, has been solicited. It is not a three year program. There is a whole long list of failings regarding pilot programs. Do you have legal counsel, have they informed you that you are exempt from this law?

Mr. HILL. Mr. Chairman, we have addressed that with legal counsel. If you are referring to Section 4007 of TEA-21, the language that is given there specifies how we are to conduct a pilot program when it give relief from or alternatives to the safety regulations. In this particular instance, there is no attempt to deviate from our current regulations. There is no———

Mr. DEFAZIO. Where is the language? I have the law. Where is the language relating to innovative approaches to motor carriers, commercial motor vehicle and driver safety may include, may include exemptions from a regulation prescribed under this chapter as—et cetera. I don't see that language that you are quoting from legal counsel in the statute. Is this inferred or are you actually quoting statutory language?

Mr. HILL. I believe that there is a reference there to having to give relief from or alternatives to the existing safety regulations. We are not giving any relief here or any alternatives. We require them to qualify.

Mr. DEFAZIO. I beg to differ. It is certainly an alternative. We are having a foreign government basically assess whether or not their truck drivers are meeting U.S. requirements for public health and safety relating to drug testing, hours of service, vehicle safety, driver licensing. How can you argue that that isn't———

Mr. HILL. Mr. Chairman, we are going to be handling them just like we do Canadian carriers in our ongoing safety regimen now. We are verifying that they are in compliance with U.S. regulations,

not in compliance with Mexican regulations. We are verifying that they comply with U.S. law. And so our———

Mr. DEFAZIO. We will follow up on that issue regarding your statutory authority. Let's go to the program itself.

The allegation is this is a "pilot," i.e., we are going to demonstrate something. And it is not a permanent and full opening of the board of the United States. Yet I do have a copy of the initial agreement, and I believe Mr. Shane participated in this process. It sets out three things. First stage, six months, we let the Mexicans in. Second stage, six months, U.S. companies that want to have their trucks hijacked will be allowed to go into Mexico.

Third stage, we get at the end of the 12 month period, in which a full and permanent opening of the border is foreseen, and new carrier operations being appropriated normal operating authority procedures of each country. Have we already reached the conclusion that that at the end of 12 months we are opening the border? It says foreseen. To me that is, it is not like there will be an evaluation that will take a certain period of time, there will be a report to Congress, whatever. It is foreseen that we will fully open our border.

Mr. SHANE. Mr. Chairman, may I answer that question? Because as you pointed out, I was privy to those conversations. Number one, that document is a record of consultations, it is emphatically not an agreement. We did not establish any international obligations beyond those established in NAFTA. The objective of that document was simply to write down the mechanics of what the two countries contemplated we would do in the demonstration program.

The third element of it, as you have suggested, is the normalization of relations between the U.S. and Mexico in trucking. It was an aspiration that we included in the record of consultations.

Mr. DEFAZIO. Right. But here is the question. What is going to happen at the end of 12 months? We have had exchanges before, and I do enjoy it. But we don't have a tremendous amount of time and I want to accommodate other members. As I said before, you should work for the State Department, I think you would be a great diplomat. But let's get to the bottom line. What happens at the end of 12 months? Are we going to put into abeyance the existing rights of the 100 companies. Since it is on a rolling 18 month basis, it sounds unlikely, it sounds like we are already extending people beyond the 12 months. Is there going to be a suspension of further approvals while there is some sort of real, deliberative, evaluative process.

What is going to happen at the end of 12 months? This says it foresees full border opening. What is the U.S. position? What mechanics, what will happen at the end of 12 months, plain and simple. I'm a simple guy. So what are we going to do at the end of 12 months?

Mr. SHANE. We will conduct an evaluation in concert with both the Inspector General and a panel of experts that the Secretary of Transportation will commission for the purpose of delivering objective advice to us about how the program has in fact———

Mr. DEFAZIO. Objective advice. These will be people named by the Secretary, who has implemented, authored the program, which hasn't been publicly noticed or comment on. And she's going to

really objectively choose objective people who are going to really objectively evaluate what really happened.

Mr. SHANE. Precisely———

Mr. DEFAZIO. And there is going to be further consultation with the Congress on this?

Mr. SHANE. I am sure there will be consultation with Congress, not just at the end, but the Secretary has herself promised that the Congress will be informed as the program is unfolding, not merely at the end. The members of the panel, I apologize, I am not in a position to scoop the Secretary on any announcements about the individuals, but I think when you see the individuals, you will conclude that they are precisely as you have described, that they are objective and they are independent and they will provide objective advice.

Mr. DEFAZIO. Well, I hope that is the case. I thank you for that, but again, I am concerned that it is essentially a foregone conclusion that you have to get this done before this President leaves office, and you don't have a lot of time left. So I am very concerned that this is a foreordained conclusion.

Let me go to one specific that I raised with the Administrator yesterday and see if he has an answer. I know that the IG might have something to say about this. The IG expressed concern about their drug testing. Basically, there are no certified labs in Mexico. There is no assurance of chain of custody. And there are tremendous concerns, given anecdotal evidence, that it is commonplace, absolutely commonplace, that the abused truck drivers of Mexico frequently abuse substances to stay awake during very long hauls, because there are no hours of service within Mexico, but somehow magically we are going to have hours of service when they come across our border. They are being abused to the point of driving 2,500 kilometers, no relief, being told to get there in a certain period of time, and they are using drugs.

Now, I am very concerned that those same people are going to be pushed across the border into the United States. I want to know, there are two things. One is, I am not willing to accept that somehow this Mexican trucking company down there is taking the samples in a secure way from the right people and shipping them to the United States to be analyzed. They could have one guy who is giving the samples. So that is a concern.

I want to know, is there going to be a safeguard? Are we going to test a certain percentage of these drivers at the border to make sure that this drug testing program is real and there are no problems?

Mr. HILL. Mr. Chairman, we are going to work with the Mexican carriers to make sure they comply with drug and alcohol requirements the same as U.S. carriers and Canadian carriers. As I told you yesterday, the Canadian carriers do not have drug testing.

Mr. DEFAZIO. Right. Again, we had this discussion yesterday, and I have already gone through the careless disregard for the law in Mexico and the fact that these are not things that are commonly accepted in Mexico and it is not likely that, being assured—I am not assured. Will you require a certain percentage of the people in this pilot program, it is a pilot program and we would want to

verify that it is working, to take drug tests at the border, yes or no?

Mr. HILL. During this demonstration project———

Mr. DEFAZIO. Is it yes or no, and then we can get to the number?

Mr. HILL. All four of the companies that we have audited have said that they are going to do their collections in the United States.

Mr. DEFAZIO. They are going to do their collection———

Mr. HILL. Their drivers are going to have their specimens———

Mr. DEFAZIO. They are going to fly their drivers up here or drive them up here?

Mr. HILL. I don't care how they are going to do it, but they are going to do it in the United States. Secondly———

Mr. DEFAZIO. I still would like to know that we are going to do some sort of random testing of these people at the border. Didn't the IG report on the problems with the chain of custody here and concerns about the program?

Mr. SCOVEL. Thank you, Mr. Chairman. I have expressed in testimony previously our concern with specifically the collection process used to produce Mexican specimens for analysis in the United States labs. Much attention has been focused on the lab question, and it is true, Mexican specimens need to be examined here, because there is no certified lab in Mexico.

However, based on my long experience with the U.S. military's drug prevention and detection effort, I can say that we have had minimal problems with our laboratories. We had, regrettably, more extensive problems with the integrity of the collection process, including some ingenious schemes by service members to subvert or defeat the collection process. If this Committee were to ask my office to verify that the agreement which the U.S. and Mexican governments entered into in 1998 that calls for drug collection processes in Mexico to be equivalent to those in the United States, it would be difficult for my office to produce an opinion unless we were allowed into Mexico to examine their process.

Now, if the current procedure envisions Mexican drivers entering this Country and producing samples here, then my office would be in a much better position to examine the process and to provide an objective opinion back to the Committee.

Mr. DEFAZIO. Thank you. My time has expired.

Mr. Ranking Member.

Mr. DUNCAN. Thank you, Mr. Chairman.

Before I begin my questions, I have been asked by Ranking Member Mica, who is apparently not going to be able to make it here, to request unanimous consent that his statement on this issue be placed into the record, and also to ask unanimous consent that statements and questions be permitted to be submitted for the record from any member. I ask unanimous consent.

Mr. DEFAZIO. Without objection.

Mr. DUNCAN. Thank you very much.

Administrator Hill, I was very impressed by the precautions such as insurance and other requirements that you are going to put in on these Mexican trucking companies. And I was very impressed by Inspector General Scovel's report. I have heard of a lot of testimony from inspectors general, most of which has been very critical of the departments that they are inspecting. But most of what he

said is there had been some great improvements and your agency has done some really good work.

But I was told that there was an associated press article recently in which a National Transportation Safety Board member said that since only a very tiny percentage of the hundreds of thousands of U.S. truck companies are inspected every year, does your agency have the resources and the staff to really inspect all these carriers in Mexico and on the border, while maintaining all that you are required to do in regard to the U.S. trucking companies?

Mr. HILL. Thank you, Congressman, for that question. I would just simply say to you a couple of things. First of all, when the Section 350 Appropriations Act was put in place, there was not only a very specific set of guidelines given to us to follow, but there was also funding that allowed us to hire dedicated resources, human resources, to deal with the requirements of Section 350.

So we have dedicated personnel that all they do is deal with the border issues. For example, the number of inspectors that we have along the border is not representative of what we have anywhere else in the Country. The vast majority of commercial vehicle safety at the roadside is done by our dedicated State and local and law enforcement partners. I think you are going to hear from one of those members in the second panel. We work with the more than 13,000 State inspectors that do commercial vehicle inspections all throughout this Country. So the people that are dealing with this particular issue along the border are dedicated, and that is their only job, is to deal with Mexican trucking related matters along the border.

So I would take issue that we are diverting resources. In fact, the statute very clearly says that we are forbidden from taking resources from within the agency and dedicating them to this Mexican trucking enforcement protocol. So I believe that we have the adequate resources to deal with this.

Mr. DUNCAN. All right. Let me ask you something else. You heard in my statement that there's just a lot of concern all across this Country about the trade imbalance that we have. I was told yesterday, as I mentioned, that there are 160 Mexican trucking companies that want to come in here under this demonstration project and only 2 U.S. carriers have applied for operating authority in Mexico. Are those figures accurate, and if so, are you going to do something to try to encourage more U.S. trucking companies? And thirdly, is this some sort of real high priority so you are going to feel pressure to hurry up and approve all these 100 Mexican companies to qualify for this program?

Mr. HILL. The numbers that you cited, I am aware of the Mexican applications that we have in place, but I am not aware of all the U.S. interests. I have heard the number two, I have also heard the number six. I don't think the number is very high.

We are not going to rush through this inspection process, this safety process. One of the reasons why we are starting with 100 carries is to give us an opportunity to demonstrate to the Congress and to ourselves to make sure that we are going to have the safety protocols that are adequate in place before we would ever look at anything any larger. And there needs to be an evaluation not only of what goes on in Mexican carriers but we are also going to be

evaluating whether or not Mexico affords equal treatment to our carriers wanting to go south.

So part of the demonstration project is to make sure that their process is transparent, allowing American trucks to apply and to receive operating authority and to be allowed to operate in the same manner that we allow their trucks to operate in this Country.

Mr. DUNCAN. Well, I will say once again, I am sure it won't be done this way, but I think we should approve a Mexican company for each American company that wants this authority in Mexico.

Let me ask you this. A little over a year or so ago, I went to a very sad funeral in my district for four young people from Crown College, a small Christian college in my district, who had been, those four young people were on a mission trip to Florida. And they were killed in a very horrible wreck by a Mexican truck driver.

What I would like to know is this: How are we going to be able to determine whether these Mexican truck drivers, how are we going to know whether they have a safe driving record in Mexico? How are we going to know that we are not allowing truck drivers in here that, the Chairman mentioned some concerns about the drug problems of some of these drivers. The drug problem, that is certainly a concern. But also the safe driving record, how do we verify this with these Mexican companies? I understand that some of these records in Mexico are really not that good.

Mr. HILL. Congressman, when we look at the commercial driver's license record, our inspectors daily are making CDL checks, commercial driver's license checks in the commercial zone. We do about 20,000 of those every month. So we are querying the Mexican Licencia Federale data base. It is called LIFIS, and it is an information similar to our own in terms of its electronic capacity. So our inspectors are verifying driver history records and we know that there are driver disqualifications occurring, because we are finding them now in the commercial zone.

Mr. DUNCAN. So in other words, you think that their records system there is just as good as ours?

Mr. HILL. I do not know; I have not seen the details of their system. I know that we were required to have a system in place and to make sure that we could account for violations for drivers operating in the United States. That piece I am sure about. I am not as confident about the Mexican LIFIS system. I do not know the details of it.

Mr. DUNCAN. All right, I am going to forego any other questions, so we can get to other members. Thank you very much.

Mr. HILL. Yes, sir.

Mr. DEFAZIO. I thank the Ranking Member.

We will go in the order that people arrived at the Committee. Mr. Holden?

Mr. HOLDEN. Thank you, Mr. Chairman.

Administrator Hill, I heard what you just said about not being able to verify the Mexican system. But I can tell you, as I mentioned in my opening remarks, I have visited San Diego and Laredo. Mr. Filner, who just stepped in a moment ago, it is his district, that San Diego crossing. I can tell you that they couldn't check the records in Mexico. They are hooked up to a system in Mexico City that basically was a failure. If you count the minor,

major violations plus the situations where they were not able to verify one way or the other, it is almost 100 percent of failure at that time, just a few short years ago.

So if we are going to rely on the Mexican system for verification and trust them, I don't believe there is any accuracy for it, unless they have come a long way baby in the last few years. So I know you might not have anything further to add to what you just said to Mr. Duncan's question, but I don't have any faith in their system, based on being their first-hand and looking at it.

That deals with the registration and the licensing and the insurance, maybe personal information on the driver. But I think you mentioned this in your opening remarks, how are we going to physically test the vehicles? Is it going to be tested in the U.S. or are we going to trust Mexican inspectors for that as well?

Mr. HILL. Congressman, we are going to do two different regimens for verification of the vehicle safety. When our inspectors, FMCSA inspectors, go south into Mexico and do the pre-authority safety audit, a pre-authority safety audit is something we are required to do by Section 350 before any kind of operating authority is granted to a Mexican carrier. During that pre-authority safety audit, we will be inspecting every one of the trucks that is anticipated to be used in this long-haul operation.

For example, the very first pre-authority safety audit that we did, the trucking company had 37 tractors. But he was only going to dedicate five of them, and trailers, to the long haul operation. So we are recording what vehicles those are, and we are going to physically inspect every one of them to make sure they are in compliance with U.S. laws and regulations. Then if they pass, we will affix a safety decal which will then indicate to us that the vehicle has met safety standards.

Mr. HOLDEN. You said that the project is going to inspect 50 percent of the traffic, is that the goal?

Mr. HILL. The law requires us to inspect 50 percent of the traffic, but we are going to be inspecting 100 percent of the carriers involved in this demonstration project.

Mr. HOLDEN. And how many vehicles, how many crossings are we talking about?

Mr. HILL. I'm talking specifically now about the pre-authority safety———

Mr. HOLDEN. The authority, okay.

Mr. HILL. When we go into the—we are going to do 100 of those. Then at every one of the border crossings, when those vehicles cross into the U.S., we will be looking for that vehicle through a specific designator. It has an X designation on the side of the truck. Then we are going to be working with DHS to make sure that we have access to their information, so that when we know one of these carriers is in the queue, we can pull that vehicle out of line and make sure it is inspected at the border.

Mr. HOLDEN. So after pre-approval, the scrutiny will, what level of scrutiny will there be, or are we just going to trust that there has been no change in the vehicle, no changing of plates, no changing of i.d. numbers?

Mr. HILL. Every vehicle that we see that is a long haul Mexican truck, we are going to be making sure they have a safety decal on it, which would indicate they have been through an inspection.

Mr. HOLDEN. I understand.

Mr. HILL. Then we are going to be looking at the license for that particular driver, to make sure that it is in compliance. Now, the law requires us to do 50 percent of those. But we are going to be checking each one of them at the border, when they enter the Country, for this demonstration project. That is the goal.

Mr. HOLDEN. I understand, Mr. Administrator, and I appreciate your testimony. But I am telling you, after being there, I am very, very skeptical.

I yield back, Mr. Chairman.

Mr. DEFAZIO. I thank the gentleman.

Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman. It is good to have you all with us today.

Mr. Hill, I am going to ask you a simplified question, and I may be amplifying my ignorance in doing it. But what is the primary purpose in the cross-border demonstration project?

Mr. HILL. The primary purpose, sir, is to fulfill our NAFTA obligation, which has been delayed now for several years, and to make certain that our processes in place meet the requirements of Section 350 of the Appropriations Act, to ensure that we have safe operation of those vehicles coming into the Country.

Mr. COBLE. Currently, Canadian trucks travel into the U.S., hauling international loads, do they not?

Mr. HILL. Yes, sir, that is correct.

Mr. COBLE. How do Canadian trucks and drivers measure up in the U.S. safety-wise?

Mr. HILL. In the year 2005, the typical out of service rate for a Canadian vehicle was 13 and a half percent, which was lower than what the out of service rate is for the U.S. carriers. I can explain out of service rate if you would like me to go into a little more detail.

Mr. COBLE. If you would.

Mr. HILL. Okay. Whenever we do this inspection that we have been referring to in our testimony and in answer to questions, if a violation is found that is so serious that we can't allow the safety to be ensured by moving the vehicle or the driver, it is rendered out of service. It can't move until the driver violation or the vehicle violations are fixed. So the rate at which we found those violations with Canadian carriers was 13 and a half percent in 2005.

Mr. COBLE. So as well or better that our trucks and drivers perform, I presume?

Mr. HILL. Yes. The out of service rate for U.S. vehicles in 2005 was 21 and a half percent.

Mr. COBLE. Mr. Hill, what actions will the FMCSA take when the pilot programs have been concluded?

Mr. HILL. As the Under Secretary indicated in his response to the Chairman a moment ago, we are going to be evaluating whether or not there are adequately safety protocols in place and being followed. In other words, are the requirements in Section 350 working as we anticipated that they are supposed to work, and then we

are going to be making reports on that, as he indicated, to Congress and other places to ensure that we have fulfilled our requirement under the law before we would proceed on it.

Mr. COBLE. Will U.S. operations in Mexico be evaluated as well?

Mr. HILL. The purpose of the bi-national monitoring group, I don't know whether you have heard this reference, but there is a team of people in Mexico and a team of people in the U.S. that are going to be working together to make sure that we remove any kinds of impediments or obstacles to allowing this process to go forward. We will be making sure that U.S. carriers going south are giving proportionate treatment and we will be evaluating how well that is being done.

Mr. COBLE. And will the Mexican officials respond in a similar way?

Mr. HILL. We have assurance from both the Secretary of SCT, the Secretary of Communication and Transport, and their staff, that they will work with us on this endeavor, yes.

Mr. COBLE. I thank you, sir. I yield back, Mr. Chairman.

Mr. DEFAZIO. I thank the gentleman. Mrs. Napolitano.

Mrs. NAPOLITANO. Thank you, Mr. Chairman. I am listening with great interest, because I sat on California Transportation Commission at the State level for six years. This had come up then. It really hasn't changed a whole lot in terms of the questions. Now, whether the fixes have been there, I don't know. But I can go into another area, because I have some knowledge of some of our American companies losing loads in Mexico.

Now, is there anything that will help our drivers, our U.S., if they are able to contract going into Mexico to assure their safety and the safety of their cargo? Because I can name you one company that's lost billions of dollars in cargo theft in Mexico, coming up to deliver to the U.S., it is a major company. There is no help from the Mexican side.

Now, that said, there are other issues that I have and I want to ensure that we don't bypass some of the inherent issues that we have. I was born and raised in a border town, I travel to Mexico fairly often. I know some of the issues in dealing with the bureaucracy in Mexico in regard to some of the law enforcement, et cetera. I have a concern that if we are allowing our folks to go into Mexico, will they be as protected, or will they have the ability to be able to have recourse to assistance from the Mexican federal government to assist our companies? That is a big issue for my carriers and for some of the businesses that I know.

Mr. HILL. Thank you, Congresswoman, for that insight. I will assure you that we are working closely with the Mexican officials and SCT. I think what you are also talking about is perhaps another area of the Mexican government in terms of protective service and so forth that we are going to be having to make sure that we work with them as well through this process.

The Mexican government has committed to us that they want to have a proper working relationship of NAFTA on both sides of the border. That would imply safety and safe passage, just as we are going to be ensuring that on our side of the border. So we are committed to working with them on this issue.

Mrs. NAPOLITANO. Well, I certainly want to talk to you, or send you the information so you can look into this one. Because it does involve trucking of products sold to the American companies for processing by American companies, to be delivered in the U.S. and hijacked. The Mexican government has done little to nothing on that.

Mr. HILL. We would be glad to relay that information.

Mrs. NAPOLITANO. The other questions that I have have to do with, in following up on the questions of my colleague, was on setting up the inspections on the U.S. side of trucks coming in, every single one, on this pilot. Do we have enough trained personnel, U.S. employees at those stations to be able to carry out those inspections on those trucks? Are you limiting it to certain crossings only? How are you setting that up?

Mr. HILL. Ma'am, one of the points that I want to make sure that the Committee understands is that we are going to be verifying at the border whether or not the truck has been properly inspected. That could imply a safety decal issued by a certified inspector that they have already been inspected in the last 90 days, what will be verifying at the border.

But to answer your specific question, back in 1995, we had very few staff in place to do this. I think we had a handful of people. We now have over 250 FMCSA staff dedicated to border inspection and auditing activities. In addition to that, we have over 350 to 400 State inspectors along the border. That is a large presence to deal with a very limited number of Mexican trucks that are coming into this Country for long haul operations, 100 carriers and a limited number of vehicles.

Mrs. NAPOLITANO. Do you differentiate in the training between long haul and short haul at the border by the training you have given these individuals?

Mr. HILL. We have done that with our staff, and we are working with the State and local authorities to do that as well, yes, ma'am.

Mrs. NAPOLITANO. In regard to the—and I have very little time—to the ability of States to be able to have higher standards, is that preempted by NAFTA? Higher standards for incoming drivers into, say, for instance, California, which has higher standards?

Mr. HILL. The current regime is that when a Mexican carrier or driver comes into a State, they must comply with those State requirements. So if there are requirements in place that that State has, they are going to be required to fulfill those requirements.

Mrs. NAPOLITANO. Will they know those laws in Mexico, so they can abide by them? Who is going to give them the training to be able to recognize what is expected and required of them when they come into U.S. territory for any given State?

Mr. HILL. Part of our process from the FMCSA side is to do some of that education on the front end, during this pre-authority safety audit. But primarily, we are there to do enforcement. We are making sure that the safety protocols are in place.

But I think during that time, we could also be answering questions and providing information to them, as you have indicated.

Mrs. NAPOLITANO. Thank you, Mr. Chair.

Mr. DEFAZIO. I thank the gentlelady for her questions.

At this point in the record, I just would insert for the record, since she has questions about security, a document from Securitas Security Services, USA, which outlines the problems of hijacking, 50 truckloads from January of this year up to March 7th, and quite a number of U.S. truckloads being hijacked and an advisory from the State Department. Again, since in part, entering into this agreement with Mexico depends on enforcement of the laws. He goes on to say, and this is the director of these services, who is monitoring what is happening to his companies in Mexico. The Mexican government has not become involved yet, because they are considered to be outpowered. And these are the people we are going to depend upon to enforce the safety and security laws for the American public.

Ms. Fallin.

Ms. FALLIN. Thank you, Mr. Chair.

I appreciate all of you coming today to give us this testimony. It is a very important topic.

I just have a couple of questions, and if I could start with Mr. Hill. Being in Oklahoma, we have the NAFTA corridor coming up I-35, the middle of our State. I have seen the wear and tear that the trucks take on our highway systems. I am just curious, if this demonstration project goes through, are there any types of fees that the Mexican truck companies will pay to help us with the wear and tear on our national transportation system?

Mr. HILL. Congresswoman, the requirement for Mexican carriers coming into the Country specifies that they have to meet State laws. One of the State laws that is in place is something called the International Fuel Tax Agreement, IFTA, and that is designed to collect fuel tax to help pay for the Highway Trust Fund. Those vehicles will be subject to IFTA requirements, they will have to have a decal that is affixed to the vehicle for officers to see non-compliance and they will be enforced if they are not following it.

Ms. FALLIN. Okay, another question. I know this is to open up trade and goods between our two countries. Have we had any further economic impact studies that if we have the trucks coming through the United States, that will affect our economy and trade?

Mr. HILL. I am primarily a safety person. But I would just say to you that in the course of hearing this discussed, we believe that it will eliminate bottlenecks at the border, thereby increasing efficiency and I think the Chairman even referred to that in the opening comments, that there will be some measured relief given to the American consumer. So we believe that it will have an impact of allowing the free flow of commerce between our countries.

Ms. FALLIN. Okay. Then one last question for Mr. Scovel. According to the testimony, it says all States have adopted operating authority rules. And the States are prepared to enforce those safety standards under this program. Will there be any extra cost to the individual States for training and also for making sure the trucks are in compliance?

Mr. SCOVEL. I would like to defer to the Administrator on the cost question. My staff has examined the training provided by FMCSA to State law enforcement personnel. One of our recommendations has been to ensure that that training is adequate, so that the local and State law enforcement authorities know what

they are looking for, and moreover, know the data systems, data bases, that they can access in FMCSA, pertaining to the specific operating authority of a vehicle.

Mr. HILL. If I may just add to that in terms of the funding, we do have grants in place that we are working with the International Association of Chiefs of Police to do training as we speak. We are training trainers throughout the Country so that they can then do training for their local law enforcement. That is money that was provided by the Congress and we are using it to make sure that there is adequate training in place.

Ms. FALLIN. Thank you very much. We are always concerned about unfunded mandates back to our States.

Mr. HILL. This will not be one.

Ms. FALLIN. Thank you.

Mr. DEFAZIO. I thank the gentlelady.

At this point in the record, in response to a question she raised and a response from Mr. Hill, I would submit a letter from CF, the Contract Freighters, Incorporated, Herbert Schmidt, President and CEO. He points out that we actually have an extraordinarily viable and efficient system already of dealing with freight from Mexico, that he has agreements with Mexican trucking companies. His U.S. certified, U.S. approved, U.S. drug tested drivers provide and drive the trailer to the border area, they drop it, the Mexican company picks it up, takes it into Mexico, likewise coming the other way. So we don't deal with this whole issue of the Mexican trucks on the U.S. roads.

So there is already a very efficient way to deal with this. He goes on to say that basically no U.S. trucking company in their right mind is going to operate in Mexico because of the safety and security problems. So I would submit that, without objection, into the record.

[The information received follows:]

CFI.

March 9, 2007

Congressman Jim Oberstar
Chairman, Transportation Committee
U.S. HOUSE OF REPRESENTATIVES
2365 Rayburn House Office Building
Washington, D.C. 20515

Transmitted via E-mail: helena.zyblikewycz@mail.house.gov

Dear Congressman Oberstar:

I am writing this letter on behalf of Contract Freighters, Inc. (CFI), to express our strong opposition to opening the U.S./Mexico border and allowing 100 Mexican trucking companies to enter the interior of the U.S. I am the President and CEO of CFI, a privately held truckload motor carrier headquartered in Joplin, MO, which was founded in 1951. Today, we operate over 2,500 trucks and 7,100 trailers, providing service to all 48 contiguous United States, Canada, and Mexico. CFI is a certified member of the Customs-Trade Partnership Against Terrorism (C-TPAT) program that was created by the U.S. Customs and Border Protection (CBP), and is also an active participant in the U.S. Department of Homeland Security's Highway Watch program. We have been providing service to and from Mexico for over 20 years, and today, that traffic accounts for over 40% of our total annual revenues (our 2006 revenue totaled over $400 Million). During this time, like others in our industry, we have provided our customers with "through trailer" service to and from Mexico, whereby their freight remains on our trailer from origin to final destination, via the major ports of entry/exit along the U.S./Mexico border. We have relied upon a group of approximately 80 Mexican carriers with whom we have equipment interchange agreements to provide the Mexico portion of this service. This business model has been a "win-win-win" proposition for U.S. carriers such as CFI, Mexican carriers, and U.S. and Mexican based shippers alike.

I anticipate that the decision to allow 100 Mexican carriers to move international traffic to and from the U.S. will have a negative short term impact on CFI specifically, and the U.S. trucking industry, generally. Ultimately, if the border does in fact truly open, we will likely be forced to purchase a Mexican entity in order to remain competitive in the short term for trans-border business. I expect, however, over time, wages and expenses will normalize and transportation costs for trans-border freight will shake out very close to the same levels that would be charged had the border not opened as proposed. However, that process could take more than a decade. We have seen this occur in the past with the Maquila companies to a great degree. The cost advantages of operating just beyond the US border have eroded over the years to the point where companies are now migrating deeper into Mexico to gain the same cost advantages they once enjoyed by locating just across the border. Regardless, there should be some short term (likely ten (10) or more years) cost savings. The question is: what price will the U.S. trucking industry and the motoring public pay with respect to highway safety, insurance shortfalls, emissions, and in lost U.S. jobs? Unquestionably, many U.S. truck driving jobs will be replaced by Mexican drivers right here on our own soil.

Statements I've read and heard attempting to justify the decision to open the border are largely premised upon the promise of reciprocity, whereby U.S. carriers would be permitted to enter the

interior of Mexico. I've also heard it said that opening the border will eliminate the inefficiencies of the drayage operations at the border, the "middle step" between US and Mexican Carriers. U.S. Transportation Secretary Mary Peters is quoted in Transport Topics as saying " With this new program, we prove that safety and economic growth are compatible." I'm sure she is a very intelligent person with good, honest intentions but if she were in the transportation business and truly understood the implications of opening the border without significantly more thought and preparation, I seriously doubt that she would have made such a statement. Nothing has been "proven" yet and if Ms. Peters believes that this move is going to make U.S. roads safer, then I suggest she spend some time in a truck with some of the Mexican drivers she proposes to allow on U.S. roads. I'm not suggesting that there are not good Mexican drivers -- there certainly are. Nor am I suggesting that all Mexican trucking companies are poorly or negligently run – there are numerous reputable, well-managed, financially stable Mexican carriers. As I mentioned earlier, CFI currently has interchange agreements in place with approximately 80 Mexican carriers, all of which are solid, well-managed entities that do a good job or recruiting, screening, and hiring good, qualified drivers. However, generally speaking, the Mexican compliance standards related to safe driving, particularly those related to hours of service regulations, are a minimum of 30 years behind those of the United States. There is virtually no monitoring or oversight of hours of service compliance in Mexico, and while Mexican drivers will be required to log their hours of driving time once they enter the U.S., how will U.S. enforcement authorities monitor their driving time in the days and weeks prior to their arrival at the U.S./Mexico border and entry into the U.S.? What assurances will we, the U.S. motoring public, have that these drivers will be properly rested when they hit our highways? We could be faced with hundreds of potentially tired, inattentive, inadequately trained (by U.S. standards) drivers operating 80,000 lb. vehicles on our highways, many of whom may also lack the ability to fluently read and speak the English language. Without question, this presents a significant risk of harm to the U.S. motoring public, and the consequences thereof could be devastating.

Promises of reciprocity may look good on paper, but as a practical matter are essentially meaningless because no American driver in his/her right mind would want to drive into Mexico today. It is largely unsafe for Americans to drive passenger cars into Mexico, much less tractor trailers weighing 80,000 lbs. and measuring over 70 feet in length. First of all, like their Mexican counterparts coming into the U.S., most American drivers entering Mexico would encounter a significant language barrier. Secondly, there are serious security issues. Thefts and hijackings are far more commonplace in Mexico than in the U.S. For your reference in this regard, I have attached an e-mail alert, which our Laredo, TX, Terminal Manager received regarding security issues along the U.S./Mexico border and in the interior of Mexico. (Note: I have the sender, Mr. Cantu's permission for this e-mail information to be shared with you and other Committee members) As you will see, its contents need no further explanation, and clearly explain why none of our drivers, nor those of any of our competitors, are eagerly lining up to cross the border. In addition, there isn't an adequate infrastructure in place in Mexico with respect to rest stops and truck stops where American drivers can purchase fuel, eat, and/or safely take their rest breaks. Fueling in Mexico is primarily a cash system, while U.S. drivers are used to operating with electronic funds and credit cards in the U.S.

Mexican traffic laws are also vastly different than their U.S. counterparts. Ask a Mexican what to do if you are involved in an accident where there is injury to another party; they will tell you that if your vehicle is drivable, keep going...leave the scene! The fact is, in most cases, an accident involving injuries means any party(ies) involved will be taken to jail while Mexican authorities investigate what happened, regardless of who appears to be at fault. Of course, if a party involved in an accident has a few hundred dollars handy at the scene, he/she may be fortunate enough to avoid that fate. In the U.S., we refer to such a transaction as a "bribe," and it's against

the law. However, in Mexico, such transactions are commonplace. Some years ago, we had to "buy" one of our drivers out of a Mexican jail. He had walked across the border and been arrested for having a small boot knife in his possession. He spent a week in a Mexican jail before we found him; he had been severely beaten, and was wearing nothing but his socks and underwear. He was extremely fortunate that we were looking for him; he was detained in a cell measuring approximately 20 feet x 20 feet with about a dozen other men. His cell had no bed and no toilet. It was just a bare concrete cell, from which the authorities cleaned the human waste by spraying the floor down a couple times a day while the inmates were still inside!

Admittedly, drayage operations at the border need to be streamlined. However, we could use the same certification standards that expedite border crossings for long haul drivers on the U.S./Canada border to accomplish the same for drayage drivers, thus hastening the crossing process. Much of the problem at the major ports is simply traffic congestion. CTPAT, FAST certification, and other driver and cargo certification processes, along with the construction of additional bridges will alleviate much of this congestion. The brick and mortar infrastructure needs to be modernized as much as the processes need to be streamlined. The process can be streamlined for the drayage drivers who bring loads across today as easily as it can be streamlined for long haul drivers who might be going from Mexico City to New York City. The advantage drayage drivers have is that when traffic is crazy and things get horribly backed up, they can go home, because they generally live along the border area. A long haul driver will have nowhere to go and very few facilities at which to eat and/or rest. They can't drop the load at a secured drayage company yard and go home. Their truck is their home and they will likely have to stay with the load.

Other questions and concerns I have regarding the opening of the border include :

Insurance concerns...it is my understanding that the insurance limits required are going to be $750,000 per occurrence. Who picks up the tab when there is a multiple injury or multiple fatality accident? The U.S. taxpayers? $750,000 will not cover a single catastrophic injury or a single fatality in our tort system.

Who is going to oversee cabotage violations? The terms of NAFTA prohibit Mexican carriers from handling intra-U.S. shipments. Who is going to police this? What will be the penalty for Mexican carriers who violate this provision? Without strict oversight, we can expect that this will happen frequently, thereby taking yet more business from U.S. companies and U.S. drivers.

Has anyone asked why the largest trucking organization in Mexico, the Canacar organization, voted against the opening of the border just a few weeks ago?

What about our environment? U.S. trucking companies are facing increasingly higher operating costs due to tightening emissions regulations. The cost of our engines increased nearly $6,000 in 2002 to comply with the first stage of a three stage tightening of emissions standards. This year our engine costs will increase an additional $8,500 per engine to comply with the 2007 regulations and we face yet another increase in 2010 when our emissions levels are required to be so low that our trucks will actually act as air cleaners in some U.S. cities. The air that goes in the intake will actually be dirtier than the air that comes out the exhaust stack when we are operating 2010 compliant engines. We don't yet have pricing on the 2010 engines but manufacturers are already warning us that the increases will be steep, likely more than this year. With each of these emissions standard changes, engines have become heavier, more costly, and less fuel efficient, yet we have supported these changes. We recognize how important it is to protect air quality. As I understand it, Mexican trucks will not be required to

meet our U.S. emissions standards. In addition to the labor cost advantage this will be another huge cost advantage they will enjoy while operating in the U.S. and they will enjoy it at the expense of our clean air.

The most concerning thing an open border will do, in reality, is simply take jobs from U.S. truckers and transfer them to their Mexican counterparts. However, unlike moving a manufacturing plant to Mexico, we're allowing them to displace U.S. jobs right here in our own country, on U.S. soil. The way the border works today is advantageous to both countries, and freight is moving fine. When U.S. companies grow their international business, Mexican carriers benefit from the additional work and additional driving jobs created to deliver freight on the Mexico side and vice versa on the U.S. side. It's a win/win proposition for both U.S. and Mexican carriers and their respective workforces. We grow...they grow. They grow...we grow. We are their partners, not competitors. We have developed cooperative interchanges whereby they move our trailers and bring them back to the border loaded. Transloading (offloading cargo from one trailer to be re-loaded on another) is rarely required. International freight is delivered on both sides of the border, primarily in U.S.-owned trailers -- by U.S. drivers on the U.S. side and by Mexican drivers on the Mexico side. It works well...and is improving every year ! If the current system is not broken, why try to "fix" it? Particularly when the proposed "fix" isn't a fix at all for the reasons I've mentioned.

In my 22 years at CFI I've never had as many phone calls from concerned drivers as I've had in the past couple of weeks. The jobs of many U.S. drivers are indeed in jeopardy. There's no denying it. Ultimately, if this goes through, we won't need as many U.S. drivers because we will eventually have to opt for less costly Mexican labor to remain competitive in handling international freight. Otherwise, in the short term, and by short term I mean for probably a decade, we would lose much of our international business to carriers who opt to utilize cheaper Mexican labor.

A more transparent border with Mexico may some day be possible, but only after it has been very carefully analyzed, properly prepared for, and gradually phased in. I hope someone has the common sense to put the brakes on this premature initiative. There are far too many questions to be answered and legitimate concerns to be addressed. It is premature to implement at this time and it makes the playing field uneven for many U.S. businesses and U.S. workers right here on our own soil. Professional drivers across the entire country are rightfully upset and concerned, as well they, and the motoring public should be.

Thank you for your consideration of this critical issue.

Best regards,

CONTRACT FREIGHTERS, INC.

Herbert J Schmidt

Herbert J. Schmidt
President and CEO

Attachment

<Jesse.Cantu@securitasinc.com>
03/08/2007 01:33 PM

To
cc
Subject FW: Concerns in Mexico - Warning

FYI

I received this important information from a very important client that I would like to share with everyone. Thanks.

Jesse Cantu, Jr.
Securitas Security Services, USA
Branch Manager
Laredo, Texas 78041
(956) 726-1510 Office
(956) 237-6646 Cell
Jesse.Cantu@securitasinc.com

Sent: Thursday, March 08, 2007 12:03 PM
Subject: Concerns in Mexico - Warning
Importance: High

There are a couple is items I wanted to let everyone know about concerning situations, Landstar and other US Carriers doing business in Mexico, have been experiencing.

Last night we lost our 6th load of freight in Mexico since the first of January this year. We did get our trailers back but, in all incidents, empty. We did have information that a crime organization in Mexico was stealing trailers in Nuevo Laredo. They are specifically targeting textiles and tires. The crime organization is heavily armed and the three drivers on the loads last night are missing at this time. We further understand 50 truck loads have been stolen year to date in this area, 2 tires loads and 48 textile loads. The Mexican Government has not become involved yet because they are considered to be out powered, according to un named sources.

It might be a good idea to advise your customers that have this type of freight or freight of hi value nature to consider moving it to Mexico via a port other then Laredo until we see some progress in stopping this action.

The following is a public announcement from the **U.S. DEPARTMENT OF STATE,**

Office of the Spokesman, dated September 15, 2006 that remains in effect, and continues to be of growing concern today. We would urge everyone, employees and agents, to heed these warnings.

"This Public Announcement alerts U.S. citizens to the rising level of brutal violence in areas of Mexico. This violence has occurred throughout Mexico, but has been particularly persistent in the city of Nuevo Laredo within the state of Tamaulipas. This Public Announcement expires on March 30, 2007.

U.S. citizens residing and traveling in Mexico should exercise extreme caution when in unfamiliar areas and be aware of their surroundings at all times. Public sources suggest that narcotics-related violence has claimed 1,500 lives in Mexico this year. In recent months there have been execution-style murders of Mexican and U.S. citizens in Tamaulipas (particularly Nuevo Laredo), Michoacan, Baja California, Guerrero, and other states.

U.S. citizens have also been victims of random shootings on major highways outside of Mexico City, Nuevo Laredo, Tijuana, and other areas throughout Mexico. In recent years, dozens of U.S. citizens have been kidnapped in Nuevo Laredo, with more than two dozen cases still unresolved; recent incidents indicate a possible resurgence of kidnappings for ransom. Mexican police and other government figures have been murdered in Guerrero, Nuevo Leon, the Federal District, Tamaulipas, and other states. Drug cartel members have been known to follow and harass U.S. citizens traveling in their vehicles, particularly in border areas including Nuevo Laredo and Matamoros.

Though there is no evidence that U.S. citizens are targeted, criminals look for every opportunity to take advantage of unwary travelers. U.S. citizens who believe they are being followed should notify officials as soon as possible. U.S. citizens should make every attempt to travel on main roads during daylight hours, particularly the toll ("cuota") roads, which are generally more secure. It is preferable for U.S. citizens to stay in well-known tourist destinations and tourist areas of the cities with more adequate security, and provide an itinerary to a friend or family member not traveling with them. U.S. citizens should refrain from displaying expensive-looking jewelry, large amounts of money, or other valuable items."

If you have any questions or ideas please contact me, I would also ask that agents doing business in Mexico that get feedback or have an incident to notify this office immediately. This information should be passed on to our agent family as Region Management deems necessary. Thank you.

This communication contains confidential Securitas Security Services USA, Inc. business information, and is intended for the addressee only. If you have received this message in error, or if there is a problem with the communication, please notify the sender immediately. The unauthorized use, disclosure, reproduction, forwarding, copying or alteration of this message is strictly prohibited.
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Mr. DEFAZIO. Now we will move on to Mr. Braley.

Mr. BRALEY. Thank you, Mr. Chairman.

I come to this hearing from a different perspective, having been a truck driver back in the days when you needed a chauffeur's license instead of a CDL. I would like to thank the Ranking Member about his poignant story about people from his district who dealt with the consequences of trucking accidents that have a very real concern to me, in light of the regulations we are talking about here today. Because one of the things we know is that having similar requirements for insurance on a Mexican trucking company is a very different thing than having that same insurance requirement on a U.S. trucking company. Because under the current regulations, DOT carriers in the United States are only required to carry $750,000 of liability coverage unless they are carrying hazardous materials, and then that limit goes up to a million dollars.

If you are in a bus load of Catholic school kids and you get hit by a U.S. carrier, the first line of defense to take care of those claims is that insurance policy. The second line of defense is the assets of that trucking company located in the United States. The problem with this requirement is that if you have a catastrophic injury, such as a hazardous release of a Mexican carrier, for example, in Ms. Fallin's home district, that $1 million policy won't even begin to cover the liability consequences of that injury. Then the people in her district are going to be faced with pursing a claim against a foreign trucking company that has little or no assets in this Country other than the vehicle that was involved in the collision and a very long and arduous process, trying to get jurisdiction over that company's assets, not over the company itself, to make those people whole. And if they aren't made whole, then we as taxpayers pick up the burden.

So what I would like to know from the three of you is whether you feel that applying the same insurance requirement for Mexican trucking companies is going to protect the safety of U.S. citizens if they are involved in a catastrophic loss involving a Mexican trucking company.

Mr. HILL. Congressman, thank you for those observations. First of all, I would just say to you that we are required to follow U.S. law, and right now that is the law of the land. And we do that currently with Canadian carriers that come into the Country. So we already have a regimen in place. As far as the hazardous materials release, we are not going to have hazardous materials in this demonstration project. So that is one piece of the equation that you explained that we will not have in this demonstration project.

I will defer to anyone else who might want to address the liability issues.

Mr. SHANE. I can't really add very much more to that, other than to say that the purpose of the demonstration program is to look at issues just like that one and to have a binational monitoring program in place that will identify issues, impediments to the normalization of relations with Mexico that we will need to address before we go any further. There are important pieces of information that we are trying to extract from this demonstration program, and it may very well be that we will come back with some recommenda-

tions to the Congress about whether or not our insurance is adequate for U.S. and foreign trucking companies in the U.S.

Mr. BRALEY. Well, as someone who has represented U.S. trucking companies and claims against U.S. trucking companies, one of the big concerns I have is where those records are going to be maintained. Because if there is a requirement that the documentation required currently under USCSA is maintained in this Country, the accessibility to people who are regulating and people who are required to pursue those types of issues is much easier than having to leave this Country and go to some remote location in Mexico where that trucking company may be headquartered and maintains its records.

So can any of you answer for me what record-keeping requirements are going to be part of this pilot project, to make sure that we in this Country have a means to monitor the compliance of these companies?

Mr. HILL. Sir, I would just say to you that when we go down and do our safety audit and then document what we find there, we will be retaining those records and they would be subject to anyone who would like to see them. They are a part of our files, so they would be kept in the United States as far as the compliance with the safety regulations for that Mexican carrier.

Mr. BRALEY. But as I understand it, that is a snapshot taken at one point in time. It is not a dynamic record-keeping process, which is what you as companies complying with this regulation are required to have in their drivers' files.

Mr. HILL. Well, they are required to have the same kind of ongoing updates to their files, just as U.S. carriers are.

But in terms of the issue of insurance, if they have any kind of deviation from their coverage, we are notified of that and we will take action to suspend their operating authority if they do not keep their insurance in force.

Mr. SCOVEL. Congressman, if I may address your question as well. As Inspector General, my staff has not yet examined the insurance question in depth. I will note that the Committee's request by letter of last week to my office to conduct an audit of the demonstration program specifically asked us to address insurance, and we will do so.

Mr. BRALEY. Thank you.

Mr. DEFAZIO. That's an excellent question. Mr. Scovel, you implied something in an earlier question. Has your staff been to Mexico to some of these companies that have already been chosen to review the comprehensive nature of the documents that they are keeping along the lines of what he is asking? Have you been given that opportunity?

Mr. SCOVEL. We have not, not yet. We have made extensive visits to the border crossings.

Mr. DEFAZIO. Why haven't you been down there?

Mr. SCOVEL. Part of the problem involves the brand new nature of the demonstration program.

Mr. DEFAZIO. Right. But is there any barrier? Will you be going there for certain to review the compliance on that side of the border?

Mr. SCOVEL. That is a question that we will ask the Department to assist us with. In view of the fact, of course, that Mexico is a sovereign country, that will require some negotiations. We would hope, in order to respond to this Committee's request for our current audit, that we will be granted authority at least to accompany FMCSA inspectors on the pre-authority safety audits.

Mr. DEFAZIO. We would love to help you with that. Thank you. We will go on to Mr. Boustany.

Mr. BOUSTANY. Thank you, Mr. Chairman.

I listened to the Inspector General's commentary earlier and he mentioned that there are associated problems with reporting Mexican driver convictions in the U.S. How difficult is it going to be to implement the recommendations of the Inspector General?

Mr. HILL. Congressman, as he indicated in his comments that we were responsive to their request to deal with this issue when we found out about it in Texas, the 40,000 citations and dispositions have been entered into the system and have been corrected. We are working with New Mexico, Arizona and California. We are going to make resources available to them to make sure that their current system of reporting that information is updated and current. We are going to be monitoring this as we go through the demonstration project.

Mr. BOUSTANY. And you will expand this to the other States? My States of Louisiana has I-10 running through. I talk to sheriffs and State troopers all the time, and of course, this is going to be a concern.

Mr. HILL. Yes.

Mr. BOUSTANY. And making sure they are up to speed on the reporting and what mechanism they have to follow through to report convictions, to make sure that the data base is clean.

Mr. HILL. Yes, one of the relationships that we have is not only with the International Association of Chiefs of Police, but also with the American Association of Motor Vehicle Administrators. They are the people that oversee the bureaus of motor vehicles throughout the Country, not oversee, but they have an association, they have a close working relationship. So we are going to be making certain that they have a clear understanding of the importance of feeding this into the 52nd State. They have been briefed on it, but we are going to be, as we now move into this demonstration project, we will make certain that that is a part of the regular update, that we meet with them.

Mr. BOUSTANY. Thank you.

Mr. Scovel, your testimony mentions the development of systems that will permit electronic verification of licenses when a truck crosses the border. We currently don't have that kind of system in place, do we?

Mr. SCOVEL. My understanding, Congressman, is that FMCSA inspectors at that point, through the LIFIS system, can access Mexican records concerning their commercial driver licenses. Here in the States, we have the so-called 52nd State system, which allows FMCSA inspectors, as well as State and local law enforcement authorities, to check possible convictions of Mexican commercial drivers in this Country.

Mr. BOUSTANY. We have concerns about the Mexican data, don't we?

Mr. SCOVEL. Actually, Congressman, our examination of that shows that the Mexican data base is accessible. We haven't had an opportunity to verify all the content of that data base. However, we obtained data from FMCSA indicating that in April 2006, FMCSA and state inspectors checked some 20,000 commercial driver license records through the Mexican LIFIS system. About one out of five of those revealed problems with the Mexican driver's license, they were expired, they were restricted, or the driver was not found in the database. That shows, we think, that first of all, the data base is accessible and secondly, the information that we are able to extract from it was helpful to FMCSA inspectors in making their judgments.

Mr. BOUSTANY. So given that, you do not feel that the implementation of this demonstration project is premature? Do you feel like you have adequate information to work with to go forward and implement the project?

Mr. SCOVEL. The purpose of the demonstration project, of course, is to test the number of these systems. And we give credit for FMCSA for taking what appears to be a limited and rather prudent step in that regard. There are a host of unknowns that cause my staff great concern. You referred earlier to the 52nd State system and its implementation beyond the four border States. You noted in my testimony, sir, that we found reporting inconsistencies and some problems in the four border States. While we certainly trust FMCSA to carefully ensure the full implementation of that program through the other States in the Country, we will of course verify that and report back to Congress.

Mr. BOUSTANY. I thank you for your answer. I yield back.

Mr. DEFAZIO. In a moment, we will have to adjourn for the votes. I am going to have to go to Homeland Security. I just wanted to say something at this point.

I believe, and I realize this is ultimately an ideological struggle over free trade and this Administration's opinions on that. They want to deliver for the Mexican government. But you are blissfully unaware, and I believe Mr. Filner will fill you in a little bit on this, on the reality of Mexico. Here is a quote from the article by Charles Bowden. These things are not made up. Talking to truck drivers: We make almost nothing, less than $300 a week. I work 48 hours non-stop. I drive 2,400 kilometers per trip and get no time for turnaround.

Every man at the table agrees on their biggest problem: the government. And by that they mean the police, especially federal, who will rob them at will. If you drive to Mexico City, another driver adds, you are robbed for sure. Police are the first to rob you. If you report a robbery, the police will try to make you the guilty person.

Then they go on to talk about drug use. This is the reality in Mexico. It is truly the reality. And you are saying, oh, we checked 20,000 commercial driver licenses against the data base kept by these same corrupt police officials. The people who are in that system are the ones that didn't pay the bribes.

You are just blissfully unaware of what you are doing here. And we are not going to put in place extraordinary safeguards to deal

with it. I am just very disappointed in the Administration on this issue. We are talking about the highways of the United States of America and the safety of the American public. And all for an ideological hit on free trade and a little sop to Mexico, because they haven't been able to deliver on some other things.

This is extraordinary. The hearing will continue immediately after these votes. It should take about 20 minutes. We are recessed.

[Recess.]

Mr. FILNER. [Presiding] The Subcommittee on Highways and Transit will come back to order.

Our Chairman, Mr. DeFazio, will be back in a few minutes. I will substitute until he does get here. As fate would have it, I was next on the list to start questions. I apologize, I did not hear your opening statement, although I read them. I also missed some of the questions, so if you have gone over it, just tell me.

I happen to represent the entire California border with Mexico between San Diego and Yuma, Arizona. I have represented that area on the school board, on the city council and now in Congress for a total of almost 30 years. So I would say I have a little familiarity with the area.

And I must say to you, with all due respect, that a lot of the comments that I heard and read sounded to me and to the people I represent as very unrealistic. You don't really know what is going on there to make the kinds of statements that I have heard, and I will point out some of them. People throughout the border, whether they are in Texas or New Mexico, Arizona or California, are going to say that you guys have got to spend some time there with truckers, owners and with drivers on both sides of the border, as I have done for years, and then you would have a better sense of reality.

My five minutes is not going to allow me to have a full sense of dealing with some of the delusionary statements you made, but let me try to go over some of them. When Mr. Braley asked a very good question about liability issues, your first statement was, oh, we have done that with Canada. No problem.

There is a slight difference between dealing with a first world country and a third world nation, slight difference. And all the records and verifications and certifications and stuff that you are talking about hardly exist in Mexico. And if they do exist, they can be forged with great ease.

So I am not sure that you fully understand the question or the issues. I have read in your statement that you are going to inspect every truck, every time, in this pilot program. And all drivers must have a valid commercial driver license, proof of medical fitness, and verification of compliance with hours of service. There is no way you will be able to do that in any satisfactory manner, in my humble opinion.

That is, in my district, every day, 300,000 people go back and forth legally. There must be 5,000 to 6,000 trucks per day through my district. Your pilot, as I understand it, did you have a number anywhere of how many trucks you are going to do per day on this?

Mr. HILL. Sir, we are trying to determine that, but we believe it will be somewhere under 1,000 trucks. We do know———

Mr. FILNER. Per day or per period?

Mr. HILL. For the whole demonstration project.

Mr. FILNER. So maybe you will have a few a day? What is it? See, you are using issues that have no relevance to the situation. At one crossing that I represent, 3,000 trucks go by. There is no way you can inspect anywhere near a few percent of those. The lines now, without a safety inspection, could be two hours long, could be four hours long, could be eight hours long. You are not going to inspect every one of them. You are going to inspect a certain percentage, 1 percent, maybe 2.

The real volume of traffic is so big. If your pilot program is so small that you can accommodate it, it doesn't give you any sense of the reality of the situation.

Do you have a number for how many per day?

Mr. HILL. We don't know. We are going to distribute it geographically, because it will depend on where they come through the port and it will depend on the size of the carrier. But we do intend to evaluate the safety protocols that we have in place. That is the whole point of this demonstration project.

Mr. FILNER. But you have had them in place for years and years. The volume is just so great, and the ability to circumvent the regulations is so easy that that doesn't mean much. You said, I think, in answer to one question, that when you inspect a truck, what are you going to do? You are going to give them a green decal, right?

Mr. HILL. It will vary in color.

Mr. FILNER. That is the decal they give now. What are you going to give?

Mr. HILL. We are going to inspect to ensure that their vehicle and driver meet the requirements that U.S. trucks meet.

Mr. FILNER. How are you going to tell me their hours of service?

Mr. HILL. We are going to first of all verify that they have a log book in seven previous days, just like we do for U.S. and Canadian drivers. Secondly, our people have laptop computers. The will enter into their point of destination and where they left from as supported by their bills of lading and other documents that are required to be carried. We will enter that to se if the drive time matches what their log indicates. And then we also have a way of verifying through an audit or compliance review what kind of compliance they are doing on a regular basis. If they are found to be in violation, then we will revoke their operating authority.

Mr. FILNER. Are you sure they have a valid driver's license? How are you going to make sure of that?

Mr. HILL. We are going to do it through verification of the Licencia Federale Information System, which is the———

Mr. FILNER. See, you are talking about things that in our society work: verification, certification. There is no such thing in Mexico. I could get a driver's license that would look to you perfectly valid. Just give me an hour and I will get it. And the data base could or could not have my name. Who knows?

How do you check the insurance? They give you a form?

Mr. HILL. They are going to be required to have insurance with a U.S. insurer———

Mr. FILNER. And how do you know they have it?

Mr. HILL.—and that insurance company must certify with us that it is in force through a standard process that we now use with

U.S. and Canadian carriers. It is not coming from the Mexican motor carrier, it is coming from the U.S. insurance company.

Mr. FILNER. And if a company has 10 trucks, each of those trucks is going to be in your system?

Mr. HILL. They are required, when they do their certification through the MSC 90 form, to state what kind of vehicles are going to be in force through that policy. That is something we will verify.

Mr. FILNER. But is that specific vehicle on that verification, on that system?

Mr. HILL. I would like to get back to you for the record.

Mr. FILNER. It doesn't, believe me. What they do now is give you some insurance form that they may have for one truck, but there may be 12 other trucks in their fleet, and it looks like they have———

Mr. HILL. Right now, the Mexican carriers that are going through the commercial zone and back to Mexico use a trip insurance process. They are not going to be allowed to use that in this long haul demonstration pilot. They mst have insurance in force with a U.S. insurer. That is different than what you are talking about with the trip insurance.

Mr. FILNER. I want to know, is each vehicle going to be in this system for verification? Every vehicle that the truck company has?

Mr. HILL. We are going to be determining———

Mr. FILNER. Or is it just for the company?

Mr. HILL. We will be determining which vehicles by VIN number are going to be a part of the demonstration project.

Mr. FILNER. You didn't answer the question about the decal. After they have been certified safe, they get a decal?

Mr. HILL. They get a commercial vehicle safety alliance decal. It is a decal that is now put on trucks anywhere in Canada, United States———

Mr. FILNER. So if they come back next day and they have that decal, you will just wave them through?

Mr. HILL. We could, unless there is an obvious safety defect, then we could pull them in.

Mr. FILNER. I am glad you have a lot of confidence in the decal. You can't scrape off the decal without destroying it, right? I have watched windshields being taken from one truck to another, with ease. Every one of those things that you said, which in our society is so important, and people carry it out most of the time. When you see stuff on decals and when you see an insurance verification, it is real. It ain't so with the ones you are going to get.

And when you get to the real case, the volume is so heavy, that you will never be able to do it. You will never be able to handle this without more efficiency at the border crossing. I will tell you, if you are waiting two, three, four, five hours now, and the safety inspection is added onto that, there is not a lot of room at most of the border crossings to do that, for a large number of trucks. The highway patrol in California has a station. But only a few trucks can pull in there. And if you are going to do every one, every time, there is no way. There is just absolutely no way you can do it, believe me. So you are going to have to do only a certain number, and when you get down to that low percentage, then your system is not guaranteed.

My time is up, but I just wanted to let you know, from the point of view of those of us who represent the border, what you are saying has just no sense of reality. There is no way that you can do most of this stuff, from our experience. I have stood at the border with American truckers, with truck owners, with Mexican truckers. They have shown me all the problems of trucks coming through, even ones that may pass a safety inspection. They showed me what the driver was doing that nobody could tell. Virtually every truck had something wrong, every truck, with either insurance or the driver's certification, every truck. In fact, there was a pilot case used in California, I think the California Highway Patrol and you guys did this in the test case, and you had almost 100 percent of problems.

You are going to have a major accident somewhere in Iowa, maybe with a school bus, the Mexican driver who hadn't slept for three days, has no insurance, and he runs into an American bus. The American people are going to say, how did this happen? We should not let us get to that situation.

Is Mrs. Miller here?

Mrs. MILLER OF MICHIGAN. Thank you, Mr. Chairman, yes, they moved me up here.

Let me just say first of all, gentlemen, I appreciate your attendance here today, and what has been some very tough questioning, and I think in a very bipartisan way. Because I think there is tremendous consternation on the part of the Congress on both sides of the aisle about how this program is going to work. And I do, I am very cognizant of the fact that it is a manifestation of NAFTA.

Coming from Michigan, I would tell you that I am not predisposed to be very sympathetic to NAFTA and some of the unintended consequences that have happened as a result of NAFTA. That is what happens sometimes with these trade agreements, I suppose. In my district, my colleague is from California, a border State. Michigan is also a border State. In fact, I-69, which is sometimes referred to as the NAFTA super corridor, or superhighway, however you characterize it, has its genesis actually in my district. The traffic transits over the Blue Water Bridge, which is the second busiest commercial artery on the northern tier of the Nation.

I will also tell you that actually, before I cam to Congress, I was the Michigan secretary of state. That is one of three States where the secretary actually has jurisdiction and principal responsibility for all motor vehicle administration. So I was responsible for licensing all vehicle drivers, whether that is passenger vehicles or commercial driver licenses, or hazardous material endorsements on the CDLs. And I did note that you said there would be no hazmat transited in the initial pilot.

But I will also tell you, I am very familiar with AMBA and the types of reciprocity of data bases amongst all of the States, which was a work in progress for many years. Sharing the data, with safety records and driving records, et cetera, amongst the States in our Country has gotten much, much better than it has ever been. It is not that way in Mexico. I do not know what the reciprocity is amongst the country of Mexico, but I did hear Mr. Scovel mention that when you were looking at the driving records, you noticed

that one in five had some sort of discrepancy. If I can say respectfully, you seem to be somewhat cavalier about that.

Let me tell you that, Michigan, if we had one in five, we would be in crisis, if there was a one in five problem with our driver's licenses. So I don't think the LIFIS system that is in Mexico does have the transparency that would give me any kind of comfort level. I think it is unfortunately that the Congress apparently cannot stop this program, because I would be very interested in trying to stop what you are having to carry out as a result of what the Congress did, and as a result of NAFTA as well.

I guess I would ask, I note that there are approximately 100 Mexican companies that have signed up to start this program. Only two American companies have signed up, which even I can figure out that something is wrong with that equation. Perhaps you could explain to me a bit your process, flesh it out a little bit, the process that you took for auditing these companies in regards to their records.

Mr. HILL. Thank you, Congresswoman. A couple of points on the auditing of the records. First of all, we are in that process right now. We have done only two or three of those. I am not familiar with any more at this point.

What we did is we looked at the people that applied and we are going down the list and we are going to do safety audits. What we are finding is that the first 16 that we had a list to go to audits on, 4 of them, when they heard that we were coming in to do the audits, have chosen not to participate. So we don't know how many we will eventually have to go through in order to get to the 100 carriers that we have talked about.

And then beyond that, we have gone through a process of verifying their information before we ever get there to make sure it is current and that they do intend still to participate in long haul trucking. So that is how we have done it at this point, and I will be glad to go further, if you have any further questions.

Mrs. MILLER OF MICHIGAN. I don't know that I have any questions. I suppose I am just making the statement that everybody else on this Committee has seemed to make during the course of this hearing, of how much distress there is and how uncomfortable people are about this entire pilot program. I am concerned they are going to run up I-69 through my State as well and up into Canada, if Canada will allow such a thing to happen. I don't know if that is part of the NAFTA agreement or not.

But I do have great consternation and as I say, it is unfortunate that Congress is not able to stop this.

Thank you.

Mr. FILNER. Thank you, Mrs. Miller.

Mr. Poe?

Mr. POE. Thank you, Mr. Chairman.

I represent part of southeast Texas, and I too am very concerned about this situation. I am not convinced at all that this is a wise idea. It looks like it is great for Mexico, and what does the United States get out of it? A player to be named later seems to be the only thing that we will get out of this.

Laredo and Nuevo Laredo, where I have been numerous times, the largest inland port in the United States, about 5,000 18-wheel-

ers a day cross that port of entry each direction. Only a fraction of those trucks are already inspected. Now we are going to have more trucks coming in, and only a fraction of those will be inspected.

Recently in Houston, the NBC affiliate has done an examination of the trucking industry in the State of Texas and the people who drive those trucks. Texas leads the Nation in fatalities of 18-wheelers. Yesterday there were two wrecks, 18-wheelers in rush hour yesterday morning. It is a daily occurrence. It seems as though the inspection of the trucks and the truck drivers is something that occurs only on an occasional basis. Now we are going to have more trucks and more drivers.

In Mexico, you can buy anything at the border for a price. You can get yourself a social security card, you can get yourself a commercial driver's license in any State you want, you can have an insurance card and you can be anybody you want to be. And they will sell all that to you before you cross into the United States. I don't see that that is going to change under this system and especially under the inspections.

So my concern is, as stated by everybody else, while it may sound like a noble idea, the reality of the matter is, there is no guarantee that these vehicles will be inspected for safety, that their drivers, that we even know who they are, much less know about their criminal record or use or abuse of narcotics. And I just want to know what assurances the American public has that these trucks will meet standards of the American trucking industry, the drivers are as qualified as an American trucker, what assurances we have except we are going to inspect most of them or some of them.

Mr. HILL. Congressman Poe, concerning the issue of the drivers and the security and their history, we are going to be verifying the driver information at the time that we do the pre-authority safety audit, we will be there physically in the company. We are going to be looking at the information. We are going to verify that the driver's license is in force and it is accurate.

Secondly, we are also working with DHS to make sure that we vett names through appropriate watch lists and drug-related data bases, so that we have assurance the people that are coming into this demonstration project are not going to be involved in nefarious activity through any data base that we have.

Secondly, I would just say to you that as we move forward with the vehicle safety inspections, we are not only going to be inspecting these at the time of the pre-authority safety audit at the carrier's place of business, but we are also going to be inspecting vehicles at the border now, we do that. Last year we did 210,000 with our partners here in Texas in the southern border region, 210,000 inspections. So we are actively involved in already doing safety inspections along the commercial zone.

Mr. POE. Of those 210,000, how many passed inspection?

Mr. HILL. There were, the out of service rate for the Mexican carriers was 21 percent, which is comparable to what the U.S. out of service rate was nationally of 23 percent.

Mr. POE. Thank you, Mr. Chairman.

Mr. FILNER. How are you going to know if they leave?

Mr. HILL. I am sorry, I did not understand.

Mr. FILNER. Truck comes in, you have inspected it, you have guaranteed that we are safe. How long can that truck driver stay without anybody knowing it? Are you verifying the exit?

Mr. HILL. We are working with DHS on that.

Mr. FILNER. The answer is no, that you are not going to verify it.

Mr. HILL. They are allowed to be in the Country for a specified period of time under a visa.

Mr. FILNER. But look, and I am sure Mr. Hoffa can speak for himself, but you have a driver here who is going to work for far under what an American teamster is going to make, and you won't even know it. There is no exit system, right?

Mr. HILL. There is———

Mr. FILNER. So they can work all day from L.A. to San Diego or from Minneapolis to Chicago, back and forth for $5 and hour or $10, whatever. How are you going to know that, and how are you going to verify after a week that they are still safe?

Mr. HILL. I would think that the carrier involved might have a little bit of interest in where his or her truck is.

Mr. FILNER. That carrier may be a different carrier the next day. I mean, every answer that you give is as if it is a first world nation of contracts and memberships and laws. The same trucking company that you verified will be a different trucking company the next day.

Mr. HILL. Those motor carriers that you are referring to that switch their identity every day, we are going to have a record of that, and if it doesn't match, then we are going to be putting them out of service.

Mr. FILNER. Meanwhile the truck driver is going back and forth. What are the consequences of that?

Mr. HILL. If there is a motor carrier that you just described that is switching their identity, then they are operating outside the scope of their authority. When they are detected somewhere in this Country———

Mr. FILNER. But the trucks are already here.

Mr. HILL.—then we will place the vehicle out of service, and the vehicle will not be allowed to move until it is properly licensed. Which is what we do now with U.S. carriers.

Mr. FILNER. Just like we do with anybody who overstays their visa in this Country, we have noted them, we know they are here and we go after them, right?

Mr. HILL. I am not prepared to talk about DHS protocol in terms of immigration and visa issues. But I can tell you about the safety———

Mr. FILNER. Yes, but I am just saying, those of us with experience with it, it is laughable what you are suggesting. It is not going to work.

Mr. Boozman.

Mr. BOOZMAN. Thank you, Mr. Chairman. Again, we appreciate your being here. And we appreciate all you do. I know you work really hard in trying to come up with the right solutions to problems. But I too have real concerns with this. As the Chairman just mentioned, if you look at the State Department program with the

visa, 43 percent of the people who are here illegally have overstayed their visa. Immigration and Naturalization is a mess. It is broken.

So DOT does a good job with a lot of things, but I guess my problem is, I don't see where you are going to do any better in a similar situation than these other agencies have done. It is a real concern.

You mentioned that 860 applications to come over here, you have whittled it down to 150, 160. But again, the fact that only one or two of our carriers, in an effort to make a buck, are willing to venture across the border, that is a very telling thing. We compare with Canada, and yet we would certainly have countless carriers going the other way.

You have mentioned a lot about different enforcement mechanisms. How many people are you going to hire? How much increased staff are you going to do? What do you anticipate a budget, increased budget? If you are not going to increase the budget for these things, then where are you taking it from to pay the bills for this?

Mr. HILL. Congressman Boozman, I don't know if you were here for my earlier answer, but when the 2002 Appropriations Act was put in place, there was dedicated funding given to hiring people for this particular project, not so much the demonstration project, but Mexican border enforcement. So the people that we have in place, the 274 FTEs that we have in place on the southern border, those are dedicated positions. They are not allowed to go up into Maine or to Michigan, so they are dedicated to the southern border.

We do not anticipate asking you for an increase in the budget, because the Congress has already provided that funding specifically to do this particular border enforcement work.

Mr. BOOZMAN. But there will be, it has been alluded to, the problem of the trucks not doing what they are supposed to do once they are in the United States. Our agencies now are basically busting a gut and there is no increased ability for them to enforce. How are you going to enforce all the potential problems that you are going to have once they get beyond the border?

Mr. HILL. One of the purposes of the demonstration project is just that, we are going to take the concerns that I have heard expressed by skeptical people today, and we are going to evaluate whether or not we are going to see an effective long haul trucking operation coming into this Country and going south. If what you are saying is accurate and the U.S. trucks have difficulty going south, then I think that is a part of the evaluation process and we will have to make a determination whether this is really something that the U.S. Government wants to do.

But our purpose is to at least try it and make sure that we fulfilling our NAFTA obligations. At this point, we are not doing so.

Mr. BOOZMAN. I understand. But again, it seems like if you are going to do this, then you have to have enforcement in the interior and you have to budget somehow to do that. You have to pay the people to do it and you have to do it with a pilot program. I live in Arkansas. Seventy percent of the crime in Arkansas is meth-related. Most of that comes from Mexico. There is no way that you are not going to have increased smuggling, you are not going to

have increased trafficking unless you go the whole way with the enforcement and the whole bit.

If you are going to do this, and I think you have the ability to do it, but you do have to do it with the understanding that you are going to be held accountable. And we really are going to do that. I think that is fair. That is what we are elected to do. But you really are hearing some very valid concerns that really do need to be addressed. If you are going to do this, you can't do it on the cheap. You have to do it right or it is going to bite you.

Mr. HILL. I would just say to you, Congressman, in closing, that we have 13,000 State inspectors right now that we work with throughout this Country. I know Paul Kalonch and the people down in Arkansas quite well; I work with him. He is a past president of CVSA. People like that all throughout the Country are right now finding unsafe vehicles, unsafe drivers every day. They did over 3 million roadside inspections last year.

I just heard about a commercial vehicle inspector from the State of Michigan, two or three weeks ago, who caught a major drug operation through a regular commercial vehicle inspection. I have done this my whole life, 29 years I have been in the State police. Believe me, I want this to work well. I do not want unsafe trucks in here. I don't want unsafe drivers. I don't want crime coming in here.

But my job in the Executive Branch is to execute what the Congress has approved, and this is what I am here to do and I am trying to do it the way you folks are going to allow us to do it.

Mr. BOOZMAN. Thank you very much. Thank you, Mr. Chairman.

Mr. FILNER. If someone from the Arkansas Highway Patrol stops a truck and finds it unsafe because something happened after the inspection, of course, what happens to that truck and driver?

Mr. HILL. In terms of a vehicle defect?

Mr. FILNER. Vehicle, or person.

Mr. HILL. CDL violation or drugs and alcohol?

Mr. FILNER. Whatever. If the highway patrol, if the guy finds either a crime by the driver, insurance problem, safety problem, a drug problem there in Arkansas, what happens to the truck and the driver?

Mr. HILL. The vehicle, if it is an offense that requires incarceration, the Customs and Border Protection staff will be called. They will come and deal with the legal alien and the vehicle will be placed out of service and it could either———

Mr. FILNER. He's not illegal, you let him in.

Mr. HILL. Pardon?

Mr. FILNER. How are you saying illegal alien? You certified that they were legal when they came in.

Mr. HILL. Excuse me. If they are found to be a legal alien and they are in violation of some State or Federal law, Customs and Border Protection will come and get them and take them back to their country. The vehicle will have to be moved by either a U.S. carrier or by an appropriate approved long haul Mexican carrier with authority.

Mr. FILNER. You are going to have some problems.

Mr. Diaz-Balart.

Mr. DIAZ-BALART. Thank you, Mr. Chairman. We have heard a lot of very interesting points today, and I have to concur with some of the things that particularly Congress Poe and Congressman Boozman mentioned about making sure that we do this right if in fact it is going to happen.

Now, I have a little bit of a different perspective. I represent Florida. We don't have the issue of drivers across the border. However, I just keep hearing that if it is drivers or trucks coming from the great white north that it seems to be okay, but if it is coming from the not so white, brown Mexico, it is totally horrible and everything is going to fall apart, which frankly, I think is rather offensive, to tell you the truth, what I have heard a little bit today. Particularly when for some reason it looks like Canada is infallible and Mexico cannot be trusted, no matter what.

My understanding would be, whether you look at cases, for example, like suspected terrorists that have come over the border, they have come from Canada, which means that they are not infallible like we know that the Mexican border clearly is not infallible. But I have just been hearing a lot of this talk, Mr. Chairman, about all these Mexicans are incapable of doing anything. And frankly, it borders on offensive, to tell you the truth.

Not that there are not real issues. But what I would say is that the real issues are both from the Canadian side and the Mexican side, because just the fact that they are the great northern lighter skinned border does not mean that they are infallible. Because history has shown that, Mr. Chairman, that they are not infallible either. So my understanding is that that is what the pilot program is all about, to try and figure out what some of those issues are, correct? To try to solve some of those issues.

But I am hoping that we are not only looking at, as we need to, what some of those issues are with Mexico, which I know there will be many of them, you have heard a lot of the issues today, but I hope that we are not assuming that because it comes from Canada that for some reason everything is okay there and you cannot get fake decals. The Chairman just mentioned a little while ago how he has seen windshields being shifted. Those are not Mexican trucks.

So we already have issues. I am just hoping that we don't only emphasize Mexico and we look at the whole issue, and what are you doing to make sure that we are not going to be forgetting other borders just because they may not be brown.

Mr. HILL. Thank you, Congressman. Just for the record, I want to state that safety doesn't have a color lens here. Safety is safety, it is vehicles, drivers, we are going to be doing safety regardless of what nationality is involved in the trucking operation.

Secondly, I would say to you that as a part of the appropriations process, the Congress has given $32 million to us every year during this reauthorization period to address border enforcement grants for both the north and the south. So there is money going to the States of Michigan, available to the States of Michigan, Maine, Vermont, all of those northern tiered States to do border enforcement for Canadian carriers, just as we do with the ones down in the south.

The only caveat is that because of the Section 350 requirements in the 2002 Appropriations Act, we are specifically required to do some things that are unique to the Mexican carrier population, which is going into Mexico and doing the audit. But I can assure you that we have, working with our States, we regularly do enforcement along the northern border and we are going to continue that.

Mr. DIAZ-BALART. What happens when the pilot program is concluded? It is done and then what steps are taken to make sure that the issues that you have found, and I am sure there will be a myriad of issues, are actually dealt with and not just kind of passed over like, oh, we did the pilot program, not let's go and expand it. How are you going to deal with those issues and how are you going to aggressively deal with those issues?

Mr. HILL. As the Under Secretary indicated earlier, this evaluation process is not going to happen at a point in time on the 11th month at the end of the project. It is going to be throughout the demonstration project.

I think one of the values to what we are doing by allowing us to observe these first few months of this project with the Mexican motor carriers is to really focus in on the safety issues and determine how well they are complying or not complying in accordance with Congressional requirements.

But to answer your specific question about the evaluation, we are going to make sure that there has been equal treatment south of the border as we are seeing with the Mexican carriers coming north. So that is going to be a key part of what we evaluate.

Obviously, safety is the standard that we have to make sure that people who are participating in this are going to meet safety standards. I do not want there to be an event, I do not want there to be some kind of a crash that occurs that draws attention to this. We have to make sure we have done everything that the Congress has asked us to do, and we are committed to doing that through evaluation process.

Mr. FILNER. Thank you, Mr. Diaz-Balart. Mr. Miller?

Mr. MILLER OF CALIFORNIA. Thank you very much.

I have some questions, and I am not trying to be argumentative, I have some questions I have not been able to answer based on what I have heard. There is no way of tracking these drivers when they come into the United States. Let's say you have a truck coming across the border and you have two drivers, one on the passenger side, one in the driver's side. How do you know that both those drivers go back?

Mr. HILL. I can only tell you that from a safety perspective, we are going to be verifying whether or not the driver and that passenger in the vehicle is authorized to be there. That is a current part of our regulations.

Mr. MILLER OF CALIFORNIA. What type of authorization do they need? They don't need a visa?

Mr. HILL. They do need a visa, I am told by the Customs and Border people. I don't have a DHS perspective, I don't have all of their perspective on this. But it is my understanding when they come into the Country and they declare that they are going to be going into the United States, at that point they will be pulled out,

they have an individual interview with Customs and Border Protection, they go into their data base and they begin tracking them.

Mr. MILLER OF CALIFORNIA. Okay. The Chairman kind of touched on a question, let's say a truck comes from Ensenada with a load. They come from Ensenada, Mexico, they drive to Portland, Oregon to drop their load off. Then they pick up a load in Portland and they drive it back to Grants Pass and drop it off, pick a load up at Grants Pass to Sacramento, drop it off, pick a load up in Sacramento to Los Angeles, drop it off, pick up a load in Los Angeles to San Diego, drop it off, pick a load up in San Diego and they are going back to Ensenada.

How are we to track that in any way? How do we know that is not occurring? All it would take is some cooperation with some American scheduler who schedules pickups. I know it sounds like an argumentative question. It is really not meant to be. But this could very likely happen. And the guy going back, he is going to be awful cheap. How do we make sure that does not occur?

Mr. HILL. Congressman, I don't think it is an argumentative question. It is a relevant question and it is a term that we use in the industry today called cabotage. Cabotage simply says that if you are coming in from Canada or you are coming in from Mexico, you can only deliver to a point in the U.S. and pick up a load and take it back. I think the answer to that is, through regular inspections that people are subjected to and going through weigh stations, using systems that we now have in place throughout this Country. I know Oregon has a very thorough process at the weigh station and they look at the way that is———

Mr. MILLER OF CALIFORNIA. So you would track that truck to every weigh station?

Mr. HILL. No, we are not going to track it. But what I am saying is, in the course of them coming through there, we would verify with their bill of lading and make sure that the loads are in fact where they are supposed to be going. And if they detect cabotage, then they are going to be subject to being placed out of service, they cannot move the load.

Mr. MILLER OF CALIFORNIA. And each time these trucks come across the border, do they have to go through the safety inspection process, or is it a one time process?

Mr. HILL. They have to be through a safety inspection process at least every 90 days, as verified by a safety decal. If we see an obvious safety defect or we want to inspect the vehicle, we can do so without having to just wave it on through because of a safety decal.

Mr. MILLER OF CALIFORNIA. I don't know if it was discussed earlier, but in 1994, the Mexican engines met our emissions standards, so U.S. EPA, up to 2003, but the Mexicans have not revised the standard which requires a 50 percent reduction, that was in 2004 to 2007, and a 90 percent reduction of nitrogen oxide in 2007 and beyond. Are we mandating that they meet those new standards?

Mr. HILL. When we have vehicles coming in from out of country, they are required to comply with the standards that are in place in those States. So if States are enforcing air quality standards, as they do in California with the———

Mr. MILLER OF CALIFORNIA. So they have to meet the new standards?

Mr. HILL. They would have to comply with those standards.

Mr. MILLER OF CALIFORNIA. My concern is a lot of our railroads are being impacted because they are trying to cut the standards, because the pollution is being emitted. Our own truckers are having to buy a new type of diesels to meet the standards. These Mexican trucks are actually going to have to do that?

Mr. HILL. One of the things that we have found, Congressman, in doing the two audits that we have already, is that the vehicles that are being proposed to come into the Country for long haul operations are newer models. The 2003, for example, is the most recent version of model coming into the Country. Those would meet the U.S. standards. So we anticipate they will be sending their best equipment north, so that it would avoid breaking down, and therefore we believe they will be using newer equipment.

Mr. MILLER OF CALIFORNIA. I really hope that the Government is going to enforce this numerous pickups standards, where they are not allowed to stop in numerous cities to pick up cargo to be shipped. Because we have lost so many jobs in this Country to illegal immigration. To lose more jobs to illegal activity by those who are supposed to be here legally is just one more burden I think it just unacceptable by the American worker. So I just would strongly encourage some type of mechanism or program be developed and is in place that we can actually track these weight loads and make sure there is no disparity between those and we are really protecting American jobs. That is the biggest concern I have.

I thank you, Mr. Chairman, for your courtesy.

Mr. DEFAZIO. [Presiding] I thank the gentleman for his questions.

Just a couple of quick questions, I appreciate the indulgence of the Committee being here so long. Just to follow up on two questions raised by the gentleman. On the emissions standards, a 2003 truck would not meet the 2007 or the proposed 2010 standards, and we are not going to require that they do? Are we going to have a requirement that any truck crossing the border meets the 2007 standards, and a requirement that any truck crossing the border meets the 2010 standards? Are we going to require that? Do the Mexicans have the low sulfur diesel available to those people?

Mr. HILL. I am told that they are working on improving the low sulfur diesel fuel access in their country. And what we are going to be requiring them to do is comply with the law, U.S. standards as they come into this Country. But we don't enforce that.

Mr. DEFAZIO. Right. So basically, we are going to have Mexican trucks coming into the U.S. and competing with U.S. trucks who don't meet the emissions standards and haven't had to make the investment or the expense.

On the other issue about the cabotage, I think the gentleman raised a very good point. What percent of the trucks en route does FMCSA stop and examine within the U.S. on an annual basis? Of all the trucks out there and all their movement, what percentage?

Mr. HILL. I would have to get back to you for the record.

Mr. DEFAZIO. So you would be like single low digits, right, in terms of truck trips?

Mr. HILL. I would really have to look at the data.

Mr. DEFAZIO. Well, the question, but that goes to the question of enforcement of cabotage. The truck comes to the border, it has a manifest, it says, I am going to New York. Then apparently they get to New York, they could deadhead all the way over to Ohio and then come back down with a load from Ohio, that would be allowed? You don't have to go to New York and back from New York. You could go to New York, you could drive the truck over and pick something up in Chicago and drive it back down, is that correct? It's just international movement that's required?

Mr. HILL. Yes. I am not sure that would be a financially smart move for the truck, but that could happen, yes.

Mr. DEFAZIO. Well, depending upon the cost of labor versus the cost of fuel and when you are not towing a trailer, who knows. But let's just leave that for now. But that is the legal framework.

But then, who is going to intercept that truck between New York and Chicago on a regular basis to determine that in fact it wasn't scheduled to take a load from New York to Chicago. It went to New York, the manifest says it is going to come back from Chicago, but only if the random occurrence of a stop happens between New York and Chicago and the person is smart enough to ask for the manifest and can read the manifest, if it is in English, and determine whether or not that truck is en route or not and see that it is carrying a load and it was only supposed to go to New York with a load and back from Chicago, and in between it is not supposed to have a load? It seems to me like we are really opening the door to the abuses that the gentleman on that end raised. I just don't see that we are building in some certainty here that we are going to prevent cabotage. And there is going to be a tremendous temptation on the part of agents to do cabotage, because they can save money.

Mr. HILL. Would you like me to respond?

Mr. DEFAZIO. Sure.

Mr. HILL. Okay. To the first one, yes, I am quite confident that the inspectors are smart enough to look at the manifest and determine where that is, because that is a part of their current process in doing an inspection.

Secondly, this will not happen in the demonstration project the way that it would happen if we were doing this on a full-scale opening of the border. But the compliance review has to be done before any permanent authority is granted. So in other words, we will go in and look at the books of this carrier, and we will examine at that time whether or not they are doing cabotage violations. And if they are, through their bills, through their records that they have been at places other than where they said they were going to do in terms of international movements, then we will take action and deal with their operating authority.

Mr. DEFAZIO. If you were doing something illegal, would you put it on the books? Again, the faith—do you know what the word comic book refers to among truckers?

Mr. HILL. Yes, sir, I have heard that.

Mr. DEFAZIO. So I am sure the same thing could go on in this area. I doubt that if someone illegally moved product between New York and Chicago that they would have declared that and their

company would record it on the books in Mexico that we could go down and examine and find.

But in any case, just one last question. And I don't know if Ms. Napolitano or Mr. Filner followed up on this. But again, just back to the initial agreement. I just find it disturbing that it says first stage, six months, second stage, six months, third stage, commences at the end of the twelve months. Mr. Shane has said there will be an evaluation before we open our borders to any and all Mexican trucks.

But then you go to page two, next steps, pilot program, joint formal announcement, done, creation, start of operations, technical bond, done, identification of Mexican carriers, in process. The beginning of the pilot program, hasn't happened yet. But you go on down and you get to the end again, and it says, beginning of pilot program, second stage, U.S. trucks, and then beginning of the permanent opening third stage.

Again, this is all initial. You have to understand that from a policy maker's perspective, we look at something that says first stage, second stage, third stage, third stage is we totally open our borders after 12 months and it is repeated on two pages and it is initialed, we have to assume that there is some understanding between the two governments that this thing is going forward.

Mr. SHANE. There is not such an understanding. The understanding is as we have stated today, there will be an evaluation preceding any normalization of the relationship between the United States and Mexico on motor carrier transportation. That is about as clear as I can make it.

Mr. DEFAZIO. The word normalization meaning what you think must happen pursuant to the requirements of NAFTA, that is what you mean by normalization, i.e., Mexican trucks can drive anywhere in the United States of America?

Mr. SHANE. And U.S. trucks driving anywhere in Mexico.

Mr. DEFAZIO. Right. But we already had, as I put in the record, the security warning and the testimony that I put in the record saying that actually, given the high degree of hijacking that U.S. companies really are kind of reluctant to go into Mexico and they have an advisory against going into Mexico, because the Government isn't there to protect them. But that same Government is keeping the records that will protect the American people.

I don't have any further questions. Mrs. Miller?

Mrs. MILLER OF MICHIGAN. Nothing further, thank you, Mr. Chairman.

Mr. DEFAZIO. Ms. Napolitano. One last bite of the apple, then we will let these gentlemen go.

Mrs. NAPOLITANO. Thank you, Mr. Chairman. I will be very brief.

We talk about the non-enforcement area of fuel, leaded fuel. If I am understanding correctly, with California, EPA is now working on the ports to assure that the ships coming in have lesser sulfur, to be able to burn less fuel because of the pollution of the port area, which then blows into my area, blows out into the Inland Empire.

We are not looking at something similar to be able to ensure that those trucks coming in are utilizing the low sulfur fuel or unleaded, whichever?

Mr. HILL. I wish that I could tell you that I am EPA specialist and could address all of this. I will be glad to follow up on the record with any specific questions you have about the environmental issues from our coworkers at EPA. But I do know from my limited visits out there, your area, the Long Beach port and so forth, that there are initiatives underway with EPA and the country of Mexico to develop projects along the border to decrease the incidence of high sulfur usage.

Secondly, they are also developing corridors in this country of Mexico for trade routes for U.S. trucks to have low sulfur diesel fuel. Because it is critical that they have that in place in order for our trucks that use the low sulfur diesel fuel after 2007, that they have that access.

Mrs. NAPOLITANO. The reason I am asking is that I did talk to EPA and they were telling me they were working on it with the port authorities.

Mr. HILL. Okay.

Mrs. NAPOLITANO. Then the last question that I will have has to do with, and I am not sure if it was covered before, but does Mexico have certified labs and protocols in place for drug and alcohol testing of their drivers, and how is our U.S. DOT planning to address the drug and alcohol testing of Mexican truck drivers?

Mr. HILL. No, they do not have drug certified labs in Mexico at this time. They have been working with us to do that, but we have not seen their labs certified. We did enter into an agreement with the Secretary of Communication and Transport in 1998 to have them use collection sites. Those collection sites are staffed by SCT employees and there are, I think, seven of them at this time.

Mr. FILNER. I am sorry, whose employees?

Mr. HILL. SCT, Secretary of Communication and Transport, which is the counterpart to our Department of Transportation in Mexico. Government employees there supervise the collection of the specimens and then they are sent to a U.S. lab, where they will be tested in a certified U.S. lab.

Mrs. NAPOLITANO. Because that goes to the safety, again, on our highways and our roads, other transportation vehicles.

Thank you, Mr. Chair. I have questions for the record that I will introduce.

Mr. DEFAZIO. I always encourage questions for the record, although I have never had one meaningfully answered in 21 years. But you can always try. And that was both Democratic and Republican administrations.

Thank you, thank you for your very generous grant of time. I am sorry about the interruption with the votes. Thanks again.

With that, we would dismiss this panel and call the next panel. Thank you.

Our next panel will be Mr. James P. Hoffa, General President, International Brotherhood of Teamsters; Ms. Jacqueline S. Gillan, Vice President, Advocates for Highway and Auto Safety, Washington, D.C.; and Major Mark Rogers, Texas Department of Public Safety, State Commercial Vehicle Safety Coordinator. If you could all take your seats and proceed in that order.

Again, I would also thank this panel in advance for their indulgence. I know this has taken a bit longer than we thought to get to you. So with that, President Hoffa.

TESTIMONY OF JAMES P. HOFFA, GENERAL PRESIDENT, INTERNATIONAL BROTHERHOOD OF TEAMSTERS; JACQUELINE S. GILLAN, VICE PRESIDENT, ADVOCATES FOR HIGHWAY AND AUTO SAFETY; MAJOR MARK ROGERS, STATE COMMERCIAL VEHICLE SAFETY COORDINATOR, TEXAS DEPARTMENT OF PUBLIC SAFETY

Mr. HOFFA. Chairman DeFazio, thank you for the opportunity to appear here, especially before this Committee, and Congresswoman Miller, who is our former Secretary of State in the State of Michigan. It is an honor to be here.

I am here as General President of the International Brotherhood of Teamsters. We represent over 3 million members and their families that every day use the American highway system. Over 600,000 of our members every day deliver goods and services using our American highways. Like every American, they have a right to safe American highways. I am very alarmed that the DOT is moving forward with this dangerous pilot project that leaves so many questions about what is going on in Mexico, and many of them have been raised here today. I have outlined these concerns in my written testimony.

Mr. Chairman, the Bush Administration is playing Russian roulette with the highways and the safety on America's highways. DOT resources do not exist to inspect the thousands of trucks called for in the so-called pilot program. The Mexican government has had 15 years to address the issue of drug safety and they have failed miserably. They have had 15 years to implement a simple computer program like we have in the United States, like all of us have here in every State, all coordinated together, and they have not done that. They have had 15 years to have a driver safety program and a program that, protocols like we have in the United States, and they have not done that. They have had 15 years to create a driver protocol for drug testing and physicals. And they have not done that.

I am very shocked by the testimony here today, by the way, which was different than what they gave to the Senate. When they testified before the Senate, they said, well, we are going to collect the drug samples down in Mexico. There is not one drug testing lab in Mexico. After 15 years, they do not have a drug testing facility down in Mexico.

Then today, Mr. Hill said, oh, we are going to do it at the border. Then in part of his testimony after that he said, well, we are going to collect them down in Mexico. Well what is it? Where are they going to be collected? And what is the temperature? I know how we do it in the United States. People almost watch you take the specimen to make sure it is your specimen. We all know how it is done, and it is not going to be done in Mexico.

Left to its own, without the pressure of the United States, Mexico trucks are even worse than they were before. Mexican truck drivers are underpaid, untrained and overworked. They are often forced to drive 24 hours without sleep. This is not the fault of the

Mexican worker. The sole responsibility for meeting the standards required by NAFTA and the Murray-Shelby safety provisions that Congress enacted in 2001 lies with the Mexican government and the United States Government.

I would like to tell this Subcommittee what the Teamsters Union has learned about Mexican trucking. Each of you has a copy of an investigative report that we did in the Teamster magazine, and I have provided that and I would ask it be made part of the record. This is the story of an investigative report done by Charles Bowden, who in 1999 wrote a story about what is going on with the Mexican drivers. He was told in 1999 that they were exploited, exhausted, the truck drivers pushed to the limit by their employers. And guess what? Seven years later, he found the same thing is going on.

Here are a few excerpts from Mr. Bowden's article, which are based on interviews with Mexican truckers. One said this: "The longest distance I drive is from Ensenada to Cancun, 2,700 miles, five days and six nights. I do it myself and I do it without a second driver." According to Bowden, they are all family men who run the highways at least 25 days a month, and they are adamant about two things, that nobody can make these runs without using cocaine and crystal meth, and they all use marijuana to come down from the high.

These drivers are victims of a system that the U.S. will depend on to enforce drug and alcohol testing and hours of service regulations. Is this the so-called pilot program that we are supposed to rely on? What kind of confidence can we have in that program? The Transportation Department Inspector General just a couple of years ago found, after a very close inspection, that they did not meet the standards of the American highways.

The fact that there is no lab, after all this time, tells us an awful lot.

What we are asked to do is believe that the Mexican driver will produce a log book at the border that is accurate about all his driving for the eight days previous in Mexico. Who would really believe that? Even now in the commercial zone, of the top out of service violations for Mexican drivers that are screened, 15 have no log books and 22 percent try and come across the border without commercial driver's licenses. We don't even know who these drivers are because of the lack of a computer.

So I would say, Mr. Chairman and members of the Subcommittee, there are so many safety and homeland security issues that need to be addressed before one Mexican truck comes across the border that we should just say stop. We have to know that our highways have to be safe. I would hope that Congress could do something to stop this dangerous program, which is really a mad rush to judgment, before this Administration runs out.

Thank you.

Mr. DEFAZIO. Thank you, President Hoffa.

Ms. Gillan.

Ms. GILLAN. Thank you very much, Mr. Chairman, for the opportunity to testify. I am Jackie Gillan, Vice President of Advocates for Highway and Auto Safety.

I would also like to add that the preeminent truck safety groups, Public Citizen, CRASH and Parents Against Tired Truckers, also support the views in my statement.

With only five minutes, it is hard to know where to start. My 21-page statement can be summed up in three simple words: don't do it.

Now let me explain why. The announced pilot program or so-called demonstration project has all the elements of a perfect storm. This perfect storm consists of a failed safety agency, the Federal Motor Carrier Safety Administration, overseeing this project, major safety deficiencies at the border, a cynical decision to open the border under the ruse of a phony pilot program, and lastly, the American public paying the price.

I really want to digress for a moment, because coincidentally with this hearing, we had a conference this weekend called Sorrow to Strength, where we had 65 people, family members who have lost someone in a truck crash attend. Many of those people are here in the hearing room today. They have absolutely no confidence that the Federal Motor Carrier Safety Administration can protect their safety over domestic trucking, let alone foreign trucking. We have Jane Mathis, who lost her son and his bride of five days in a truck crash; the Willbornes from Oklahoma whose son was moving into the dorm his freshman year and was killed by a truck crash; and we have the Woods family here from Virginia, whose daughter was killed returning to college from her fall break. These are the people that this pilot program is going to affect if we don't get it right.

FMCSA has failed to meet any of its safety goals in the last seven years. We still kill over 5,000 people annually and 115,000 or more are injured. FMCSA has ignored Congressional mandates to issue safety regulations. And when they have issued them, they are weak and ineffective. There are two important safety regulations, the hours of service regulation for truck drivers and entry level driver training has been overturned unanimously in the court with stinging opinions. I am also going to submit for the record a report that we released yesterday, The FMCSA, A Failed Agency, that goes into great detail to all of this.

The second component of our perfect storm is inadequate border safety. We have already heard about some of the safety deficiencies that are already at the border. I would like to point out that even the IG in his testimony this afternoon used the term that DOT has substantially met the requirements of Section 350, and he did not say that they have met all the requirements of Section 350. There are still serious questions about drug and alcohol testing, medical and physical fitness of drivers, and whether the States are now enforcing out of service for foreign carriers.

I would also like to mention motor coach bus inspections, which the IG has said are sporadic or non-existent, and the issue of hazardous materials transportation with Mexico-domiciled carriers. Now, I know these are not part of the pilot program yet. But because Section 350(a) and (b) expressly state that "No vehicles owned or leased by a Mexican motor carrier can be permitted to operate beyond the border zone until the provisions of Section 350 have been fulfilled," this is a legal bar to any commercial vehicles

being granted operating authority to travel beyond the border zones, until all the requirements of Section 350 are fully completed.

Lastly, we have the third component of the perfect storm is the one year pilot program, a calculated, cynical move to open the border regardless of safety. Last week's testimony before the Senate Appropriations Committee made it clear there was no planning involved, no methodology to assure an objective trial, no criteria for selection of participating motor carriers. We also agree with you, Chairman DeFazio, that the pilot program that they are composing does not comply with the law drafted by this Committee in 1998 as part of the TEA-21 Section 407 governing the conduct of pilot programs by the U.S. Department of Transportation. Calling the pilot program a demonstration project fools no one.

We are also concerned because this pilot program was kept in secrecy for many years, even though Secretary Peters at her confirmation hearing assured the Senate Commerce Committee that there wasn't any pilot program in the making. Last October, Advocates for Highway and Auto Safety filed a FOIA to get the documents to better understand and see what they were thinking of in doing this pilot program. The Administration stalled and stalled, and even though they were supposed to provide the documents within 20 days, no documents were made available, and therefore just this morning, we were forced to file suit in Federal court in an effort to get these documents.

There is little question that the intent of the pilot program is to supply the justification for opening the border once the year is over. Mr. Chairman, we cannot let an agency that has failed us so miserably in protecting domestic trucking operations say, trust us on this critical decision affecting American families. And I would also like to add that with CAFTA, once the Mexican border is open completely, we do not have any Section 350 guaranteeing the trucks that are going to be coming up through Central America.

Thank you.

Mr. DEFAZIO. Thank you, Ms. Gillan.

Major Rogers.

Mr. ROGERS. Good afternoon, sir. Mr. Chairman and members, my name is Mark Rogers. I represent the Texas Department of Public Safety, and in my opening statement I would like to give you an overview of our Texas border and safety program.

Our border safety inspection program is operated to provide both an effective and efficient commercial vehicle enforcement program that is designed to ensure public safety and security, prevent the premature and unnecessary deterioration of our State highway infrastructure due to overweight vehicles, and to create an environment that promotes both vital and safe commerce in the State of Texas.

Our program is designed to ensure that only competent drivers are operating safe vehicles in compliance with our State statute. Our program also encourages the trucking industry to take a greater participatory role in resolving any transportation issues that arise. It is important to note that at our Texas-Mexico border, our goal is not only ensure safe vehicles, but it is not to impeded legally compliant vehicles as well.

When we determine whether to stop and inspect a vehicle, we basically use four criterion. We visually inspect each vehicle that passes by our inspection facility to see if there are any safety defects, we weigh each vehicle on weigh and motion equipment, we look to see if the vehicle is displaying the valid commercial vehicle safety decal, and then we also look to see if there is any other obvious defect or violation of our State statutes that we enforce.

It is important to note that our border inspection program does screen 100 percent of the vehicles visually. We also screen 100 percent of the vehicles via weigh and motion scales. But we generally only conduct a more thorough inspection of only about 3 to 5 percent of the vehicles that actually cross the border. In calendar year 2006, the U.S. Customs and Border Protection Agency indicated that there were over 3 million commercial motor vehicles that crossed from Mexico into Texas. During this same period, the Department of Public Safety did an inspection on more than 101,000 of these vehicles. During these 101,000-plus inspections, we placed 23,651 of those vehicles out of service, or had a 23 percent out of service rate. At the same time, during these 101,000-plus inspections, we only placed 649 drivers out of service, which is less than 1 percent of the total inspections that we have done.

Thus far in calendar year 2007, our out of service rate for vehicles continues to be at 23 percent, and our out of service rate for drivers continues to be less than 1 percent. These figures at the national level are comparable to the national out of service statistics for vehicles, but they are much lower than the national out of service statistics for drivers. We attribute this to an aggressive enforcement program at the border. These statistics are considerably lower than when we first started our program back in 1995, when we virtually had a 100 percent out of service rate.

At present, the Department of Public Safety staffs the nine largest ports of entry on a daily basis. We staff our facilities at the same hours that the U.S. Customs and Border Protection import lots are open. And our current border staff numbers 310. The Texas Department of Public Safety remains committed to assisting the Federal Motor Carrier Safety Administration in meeting its requirements to ensure compliance with Section 350 of the fiscal year 2002 U.S. Department of Transportation Appropriation Act. It is through the support of the Federal Motor Carrier Safety Administration that our border enforcement program has grown to its present level.

I would like to thank you again for the opportunity to address the committee on this important issue, and would be happy to answer any questions concerning our Texas border inspection program.

Mr. DEFAZIO. Thank you, Major.

President Hoffa, obviously truck drivers often frequent the same places, truck stops, whatever. I am wondering, what do you hear? We have the story by this author, which seems quite credible in terms of the problems in Mexico with the use of drugs by the drivers, drivers who are abused by their companies, made to drive extremely long distances without rest breaks, basically no recognition for hours of service.

What are your folks who come in contact, do you have any substantial number of members who come in contact with some of the Mexican drivers? Have you heard confirmation of this with drivers who are coming across the border?

Mr. HOFFA. We hear this down in the commercial zone, when the drivers come across, where there is interaction between the Mexican drivers, where they drop off the trucks, and then the American truckers take them throughout the United States. There are a lot of complaints from those drivers about how hard they have to work, how they have to use drugs. Basically, our drivers are saying, my God, if those people get over here, it is going to really be a problem.

I think it is obvious that these drivers don't have the same training, they are going to be pushed. When you get a driver that is sent from Monterrey, Mexico, to deliver something in Detroit, and he doesn't get it done in time, how does he get home? The whole story is, what is his redress? Who does he complain to? He doesn't have a union. He will be fired if he doesn't do it in a certain period of time or do it the way the company wants, because he doesn't have the protection that we have of hours in service, of the wage and hour laws that a person in the United States would have. They really have no protection.

And this whole idea about, we are going to monitor the hours and it is going to be kept in Mexico, well, how are we going to get those records down in Mexico and how do we know how they are kept? So I think that what I have heard from the drivers is that it is going to be a big danger if they come across, and that is from the American drivers. The Mexican drivers, they are looking at it from the standpoint that, I will do whatever I have to do to make a living, because I have a family.

It is the same idea about what is coming across the border. We have thousands of people, illegal aliens coming across the border. They are coming here because there are jobs here, there is money here. I think you are going to see the same thing with the Mexican drivers. They want access because they want to make money. It is the same thing about people coming across the border. And the answer is, they don't have the training and they are going to be pushed very, very hard and it is going to create a serious problem on American highways.

Mr. DEFAZIO. Okay. Major, there was something that I brought up with Mr. Hill yesterday, and since it relates to Texas, I thought I would ask you about it. In the Inspector General's report, they talked about something disturbing, which is that we seem to see a huge drop-off in traffic convictions from Mexican-licensed drivers from January through May 2006. But then the Federal Motor Carrier Safety Administration found that Texas had just stopped putting information into the data base, that in fact there had been 40,000 violations during that relatively short period of time. That is basically a five month period, that is 8,000 a month.

And now they go on to say that that Texas is still not providing the information electronically, there is a manual process. Can you address that a little bit? It doesn't give us a high level of confidence. That is on our side of the border, let alone what really goes

on on their side of the border in terms of violations, whether or not they are recorded properly to their record and all that.

Mr. ROGERS. Yes, sir. Citations primarily are written at the border via a laptop computer. They are generated for the driver and then the driver is given a copy to report to the court. Then the citation is not electronically transmitted to the court. That is a manual process. It is taken to the local court and it is filed by the officer. Once adjudication occurs on the offense, some of the courts do electronically report dispositions back to the Department of Public Safety, others do not. That is a very manual process. Essentially, the reverse side of the citation is filled out with the violation information and that is forwarded by the court to the Department of Public Safety for entry into the commercial vehicle driver's license information system.

There were problems within the department's ability to be able to report those violations. It was discovered and corrective measures were taken with the support of FMCSA. They are currently being reported in an electronic manner.

I also want to assure you, sir, it hasn't been because we have reduced the number of citations that we were writing. The number of citations has remained pretty static throughout this entire period. We believe we have corrected our reporting difficulties.

Mr. DEFAZIO. You said that basically you are inspecting somewhere between 3 and 5 percent of the vehicles crossing the border, and yet you had 23 percent placed out of service, 23,651 vehicles. Can we expect that if, I mean, let's put it this way. Are those 3 to 5 percent because there was something obvious going on? Or is that just a random sample?

Mr. ROGERS. No, sir, it is because there was something wrong with the truck, the inspector selected that particular vehicle.

Mr. DEFAZIO. So he saw it moving and saw something?

Mr. ROGERS. Correct. As it was rolling by, it was either visually selected or there was some sort of obvious defect.

Mr. DEFAZIO. So if we had more personnel and we were able to inspect more trucks, do you think that the out of service rate would remain the same or perhaps would drop, because these are the trucks with the most obvious defects?

Mr. ROGERS. It would either remain the same, sir, or we feel that it would decrease somewhat.

Mr. DEFAZIO. Okay. But still, that could mean a lot of trucks that would be placed out of service who weren't driving around?

Mr. ROGERS. That is correct, yes, sir.

Mr. DEFAZIO. So that is a concern.

I don't think I have any other questions. Mrs. Miller?

Mrs. MILLER OF MICHIGAN. Thank you, Mr. Chairman.

Let me just tell you sincerely how much I appreciate your calling this Committee hearing, because this is such an important issue. I appreciate the panel, the second panel, all of you coming again and sitting through what has been a very lengthy Subcommittee hearing here today, particular Mr. Hoffa, from the great State of Michigan.

After almost three and a half hours of listening, almost without exception, every member on both sides has expressed consternation about this program, what a problem it is going to be. I think it is

well documented by the testimony of all of you and the panel before you, in some cases, about the problems. This is really just a problem that is waiting to happen.

I don't know what other question I can even ask of you. I have no question in my mind that this is a bad situation. I would respectfully suggest, I would like to start turning from questions and think about an action plan on how the Congress could actually stop this. I have been sort of sitting here noodling about what we can—I cannot believe we can't do anything about this. I do understand it is a manifestation of NAFTA. I do understand about the court case, et cetera.

But perhaps, Mr. Chairman, if I could respectfully suggest, just something I have been thinking about, that this Subcommittee or the full Committee would send a letter to the appropriators, asking to have the funding for this particular pilot program denied. That would be a way perhaps for us to stop it. I am going to continue to try to think of other avenues that we may be able to take as a Congress to stop what I think, as I say, is just a huge, huge problem waiting to happen.

As I mentioned, before I came to the Congress, being the chief motor administrator in my State, I have worked with Mr. Hoffa and other trucking groups with the rodeos, the trucking rodeos, and we were so proud of our safety record and the kinds of things that we have tried to do in our State and across the Nation, in thinking about what the potential is here. I was the Chairman of the Michigan Safety Traffic Commission for seven years.

So I appreciate all the information that I am hearing here today. What I am saying now is somehow we have to develop an action plan of actually trying to stop this pilot program before any damage is accrued to our Nation. That would be a suggestion that I would lay out on the table and I will be thinking of other avenues that might be appropriate as well.

Again, I want to thank the panelists, and thank you, Mr. Chairman.

Mr. DEFAZIO. I thank the gentlelady. I actually had a brief opportunity to approach Chairman Oberstar while we were voting on the Floor and I expressed the same concern to him. I thought that there was strong bipartisan concern that we needed to take action, that we were not confident that the program, which is dependent upon the good offices of officials in Mexico and paper keeping, record keeping by these Mexican trucking companies, was a sufficient measure to assure that these trucks and drivers would be safe when they come across the border into the U.S.

So I agree with you on that, and would like to, I intend to first challenge their premise that they are exempt from the law regrading pilot problems. It is highly unusual, in the least, and Ms. Gillan, you might address this, since you are a watchdog safety advocate. I am not aware of any other program of this magnitude which did not go through a rulemaking process with some notice in the Federal Register, which would be required, as I see it, under TEA-21.

Ms. GILLAN. You are absolutely right. I think it is interesting that we gave similar testimony to the Senate Appropriations Committee, where we challenged them about this pilot program. And

now they have changed the nomenclature to call it a demonstration project. So I think that sort of says it all right there, that they are trying to wiggle out from under that requirement also.

And the fact of the matter is, if you also read Section 350, even though they have excluded trucks transporting hazardous materials and buses, the language is very clear that no vehicle shall cross the border until all the requirements of Section 350 have been met. And they haven't been.

Mr. DEFAZIO. Anybody else have an opinion on that?

Mr. HOFFA. I would think that somehow Congress could deny funding for this. Perhaps that is the way to do it, to notify this Department and go to the Appropriations Committee and say that there is broad bipartisan concern about this program and that we will not fund it. And when funding does come up, it would be found out and stopped.

Now, I know it is a big, amorphous budget and it is hard to find the money in it. But at least that type of directive might be something that would be a way to de-fund this particular project. I have heard that has been done other ways, other times. So may de-funding it or not funding is a possible way to do it.

Mr. DEFAZIO. I am sorry, I didn't notice, we do have another member of the Committee. I was so focused straight ahead here.

In response to that, the problem of course is that the giant Continuing Resolution would have extended funding through next October for this particular program, in all probability, since we didn't earmark anything and we left great discretion to the agencies. So something, it seems to me, a limitation amendment is certainly something that we can offer, if our colleagues on Appropriations would see fit. But that would only apply to the next fiscal year, which would mean we would still have the program between May and October, at least. So I am going to look for something that we might be able to do a bit more immediately.

Mrs. Napolitano, I apologize.

Mrs. NAPOLITANO. That is okay, you are on a roll.

To Mr. Rogers, do you check with the courts to see the percentage of citations that are complied with in regard to appearing in court, correction of defects and paying of any fines?

Mr. ROGERS. Yes, ma'am, we do. Roughly about 80 percent of the citations that we write are complied with within the terms of the citation. That leaves the remaining 20 percent that result in warrants for the arrest of the driver. Then we have those warrants in file. Should we interact with the driver, we would serve those warrants and arrest that driver.

Mrs. NAPOLITANO. But do you do that at the border? Because if they come in, do you have the ability to identify those warrant violators?

Mr. ROGERS. Yes, ma'am.

Mrs. NAPOLITANO. You do, okay. Do you by any chance speak to the other border highway patrol or other law enforcement agencies to share comments? Do you meet and discuss this issue?

Mr. ROGERS. No, ma'am. It is not a regularly scheduled meeting between the four border States.

Mrs. NAPOLITANO. Don't you think it might prove advantageous to be sharing information?

Mr. ROGERS. Yes, ma'am. The more information you have, the more sound decisions you can make. But it is has not been something that has ever been put in place.

Mrs. NAPOLITANO. Well, maybe we should suggest to the four border States that they discuss the issue. Because it will affect the safety of the people that you guard.

Mr. ROGERS. Yes, ma'am.

Mrs. NAPOLITANO. Thank you.

To President Hoffa, have you worked at all, have you had any dialogue with the Mexican labor unions in regard to this issue?

Mr. HOFFA. We have not. We know some of the people down there. But on this issue, they haven't approached us nor have we approached them. We should probably do that. But they are very, very weak with regard to these issues. And there are thousands and thousands of independent truck drivers that don't belong to the unions. Unions there are relatively weak, and they do not have enforcement power.

When people come across the border, they don't belong to unions. The number of people belonging to the transportation union is so small, that it really wouldn't cover and they wouldn't have any jurisdiction over this. Now, maybe they could speak out, that is something they could do. We could talk to them about that.

But as far as the individual drivers, they really are not union members.

Mrs. NAPOLITANO. I understand that. But if they were able to maybe suggest a way of being able to be more effective in providing safety safeguards.

Mr. HOFFA. Well, as I said in my testimony, it has been 15 years. One of the things I like to point out is that when NAFTA was passed in 1993, the United States actually had a trade surplus with Mexico. Today we have a $68 billion trade deficit with Mexico. So we know what is going on with Mexico, everything is coming out and very little going in. There is a huge trade deficit with Mexico. You would think that with all that revenue and all that time, that they would have addressed these issues. I agree, if the unions could speak out, that would be good. But it really is a Government issue to bring up. And you would think they would want to bring up their standards to our level, so they could be true partners in NAFTA. And I think they have failed that mission.

Mrs. NAPOLITANO. I agree with you, because I know that prior to NAFTA, I was not here during passage of that agreement, it did not encompass some of the safeguards that would be necessary. This is one of the reasons why I am totally against some of these trade agreements that don't protect our general public in the United States. We seem to be able to give carte blanche, if you will, in some areas, without understanding that what we are doing is tying the hands of our law enforcement and of our other agencies to be able to protect the United States, not only the business, but the public safety of the people.

We talked about the issue of being able to have a truck driver deliver, say, to New York and go back empty. Do you think that happens, or do they pick up loads and take back?

Mr. HOFFA. It is hard to imagine that a Mexican truck driver who was interested in making money and feeding his family, he is

going to find a way to make money. That is the issue of cabotage, that they are not going to go back empty, they are going to find something to take back, they are going to find some way to stop. There is always a network of people that say, if you stop here you can pick up something.

And I think that is something that the people from the Administration really have no answers for. They had no way to police the people in, when we all know about people coming to this Country, they say they are going to be a student, they get a visa, they come here, they disappear into the system. No one can find these people. And if that is true, we can't find people who come to our Country who have a visa and disappear, how are we going to find these people?

Mrs. NAPOLITANO. But Mr. Hoffa, on the way back, they have to cross our border. Do we not at that border find out if they are going empty or are they carrying materials and are they qualified or allowed to be able to carry it back into Mexico? Because they have to go through our border.

Mr. HOFFA. I didn't hear any testimony on that, and I wonder what kind of documentation they have.

Mrs. NAPOLITANO. Well, maybe that is something we need to go into.

Mr. Chair, there are a couple of other things I would like to cover.

Mr. DEFAZIO. Go ahead.

Mrs. NAPOLITANO. Suggestion, panel? Any one of you. What do you suggest we need to do. And I heard you about the appropriation, withdraw the funding or the cutting of funds to be able to do that. But what other suggestions would you have to be able to begin imposing upon this Administration the necessity of being more careful on what we do on this specific issue? Because it will affect our people and our safety.

Mr. HOFFA. Well, the problem, and I have been critical of this Administration, they never saw a trade agreement they didn't like. Every trade agreement they make, whether it is Peru, whether it is Panama, whether it is Colombia, one trade agreement after another, CAFTA, NAFTA, on and on and on. Every one of them results in a massive trade deficit. Every one of these agreements ends up with a trade deficit. I would like to see one that works, or maybe it was equal.

The answer is, we have to make sure that there is an equality. If you are going to sell your goods to us, we have to be able to sell our goods to you. And with regard to what we are talking about today, one of the Congressman said, I would like to see it on the fact that if we are going to have 10 trucks going over the border into the United States, we will have 10 American trucks going over there. Some type of equality with regard to trade, some type of equality with regard to services. To me that makes sense, so that we have some idea that this is a fair deal. We want fair trade. No one wants to build a wall around America. But we realize that we have to have fair trade. And we do not have that today. It is a one way street with a $68 billion trade deficit.

Mrs. NAPOLITANO. So what would be the answer?

Mr. HOFFA. The answer is we should rewrite NAFTA, is one of the things we should do. We should rewrite all these trade agreements to make sure we have protections for our borders, to make sure we preserve our sovereignty. Many of these agreements say that we lose our sovereignty, that we cannot have a law that is contrary to what they have in Mexico, we can't enforce those laws. We have seen tests with regard to environmental issues. We have to make sure that we protect what we have in the United States, so we keep high standards as opposed to going to low standards.

And that is the issue here with regard to highway safety, that we know that our standards are up here, and we believe that the standards in Mexico are down here. Until they meet our standards, they should not be able to come across our border.

Mrs. NAPOLITANO. They have been attempting to improve the standards. That I know for a fact. They have not been able to improve them to the standards that we keep raising, because we do keep raising our standards to protect our folks. It is something that we need to go at.

Ms. Gillan?

Ms. GILLAN. Advocates for Highway and Auto Safety comes at it from a little bit different perspective, because we did not take a position on NAFTA. We are a coalition of consumer health, safety and insurance companies. We had many of our consumer board members who opposed NAFTA and our insurance members supported NAFTA. However, we are completely in agreement that NAFTA should not degrade the safety of the American public. That is why I am here testifying, saying that the border is not ready to be opened. You have heard all the different issues. You could have a driver from the central part of Mexico drive 12, 14 hours, get to the border and still have 11 hours that they can drive. And fatigue is a major problem.

Mrs. NAPOLITANO. And the answer?

Ms. GILLAN. And the answer is, I think we need to get some legislation passed to stop this pilot program from going through. The Administration says they want to move it in 60 days. That doesn't give us a lot of time and they are not going to correct these problems with 60 days.

Mrs. NAPOLITANO. Major?

Mr. ROGERS. Ma'am, unfortunately, as a State employee I can't offer any advice as to pro or con against any piece of legislation.

Mrs. NAPOLITANO. But given your findings, given the impact it has, would you want to have a budget to be able to help you do better enforcement?

Mr. ROGERS. At present, ma'am, the budget that is provided to us by the Federal Motor Carrier Safety Administration is quite adequate to do our enforcement program.

Mrs. NAPOLITANO. It is?

Mr. ROGERS. Yes, ma'am. They provide us with about $24 million each fiscal year, which is very adequate for our enforcement.

Mrs. NAPOLITANO. Okay, then the question, sir, would be, if they go ahead and work through this pilot, this demonstration project, what would be the impact on your ability to be able to do the job?

Mr. ROGERS. It would really be insignificant. We already have 3 million trucks crossing a year in Texas. So a few more will really not have an impact on us.

Mrs. NAPOLITANO. But can you tell me if there is any real impact on the communities themselves? I was born and raised in Brownsville, Texas. I can tell you, I grew up in that area. To see a mile long of trucks waiting to cross is not necessarily what I remember of my home town.

Mr. ROGERS. Yes, ma'am. We are not the ones that create the backlog. That is when they actually cross the border and interact with Customs and Border Protection. Basically, if you are not selected for inspection inside our facilities, you move through in just a few seconds. So we really don't impede that process. The lines occur when you are waiting to clear in Customs and Border Protection.

Mrs. NAPOLITANO. Thank you, Mr. Chairman.

Ms. GILLAN. Could I just add something? I just spent this weekend met a police officer from Fort Worth, and he was mentioning to me, I think it is an issue no one has even focused on, the Federal money for truck inspections goes to the State. But we haven't even thought about the burden is going to be on local police, that once these trucks go out, leave the border zones and travel throughout the United States, those police are also going to be charged with enforcing trucks, if they see a truck that is unsafe or a driver that is fatigued. Nobody has even thought about the additional burdens on local police when they have to start enforcing these truck safety laws.

Mrs. NAPOLITANO. Mr. Chair, with your indulgence, because I sat on transportation for six years in California, and the Highway Patrol, which deals with not just—they deal all over—what is specific to that issue is the safety, the upkeep, the maintenance, the driver's license, the placarding, safety factor in the normal, if the person had slept, the logs, all of that came into play. As I say, it hasn't changed much. There are still the same questions, as to whether or not we are going to be allowing the truck drivers to operate under the same premise that they operate in Mexico, with a few adjustments, but not enough to be able to provide the law enforcement the ability to determine whether or not they are safe to drive on our streets and our highways.

Thank you, ma'am. Thank you, sir.

Mr. DEFAZIO. Thank you, Ms. Napolitano.

I want to thank the panel members for their time and their testimony. I think you can see with perhaps one exception there is broad concern on this Committee on a bipartisan basis about the potential problems with this program. We are going to do the best we can, I am going to begin to try and formulate a strategy to push back on the Administration here. We are not confident that they have reached the point at all where they can assure us that these trucks coming across the border are going to be as safe as American trucks, and even within our own industry in our Country we have problems. So to bring in yet another pool that pulls down the overall safety is not, certainly not desirable.

Thanks again for your time and your testimony. The Committee is now adjourned.

[Whereupon, at 4:32 p.m., the subcommittee was adjourned.]

Subcommittee on Highways and Transit

Hearing on the "U.S./Mexican Trucking:
Safety and the Cross Border Demonstration Project"
Tuesday, March 13, 2007

Statement – Congressman Jason Altmire (PA-04)

Thank you, Chairman DeFazio, for holding this hearing today on the "US-Mexican Trucking: Safety and the Cross-Border Demonstration Project." I appreciate your quick attention to this issue.

As you articulated in your opening remarks, we are here today to examine the Department of Transportation's announcement of February 23rd to initiate a pilot program that would permit 100 trucking companies to conduct long-haul, cross-border operations. This raises a number of concerns. How will this program be administered? How will safety issues be addressed? Are current U.S. trade and immigration policies being followed? I hope the witnesses before us today will address these issues and explain the pilot program in greater detail than what has been reported to date.

Thank you again, Mr. Chairman. I yield back the balance of my time.

# # #

Subcommittee on Highways and Transit
Hearing on "U.S.-Mexican Trucking: Safety and the Cross-Border Demonstration Project"

Tuesday, March 13, 1:00 p.m.
Room 2167 Rayburn House Office Building

Opening Statement of Congressman Elijah E. Cummings

Mr. Chairman:

Thank you for calling today's hearing to examine current plans to allow Mexican trucks to operate in the United States.

I strongly believe that the requirements of international trade must not take precedence over the safety of American drivers or the interests of the American trucking industry – and like many of my colleagues, I am deeply concerned about the potential impact of allowing Mexican trucks to operate on U.S. highways.

In 2001, Congress passed legislation requiring the Department of Transportation to ensure that 22 specific safety requirements were met by all Mexican trucking firms seeking to operate in the United States.

I believe that each safeguard spelled out in this legislation is essential before any Mexican truck should be allowed to operate in the United States – including the development of procedures for conducting safety examinations of trucks, reviewing driver and trucking firm safety records, and ensuring compliance with hours of service.

However, I am troubled that the complex effort to ensure that Mexican trucks could operate in the U.S. safely has diverted – and will continue to divert – funding from under-

funded programs intended to ensure the safety of U.S. trucking.

And I am concerned that despite our best efforts, we may still not be able to ensure that all Mexican trucks operating here comply with all applicable American laws and safety regulations.

Further, as a representative of the state of Maryland, a state which several counties still are not meeting air quality standards – in large part because pollution generated in other states floats to the East Coast – I am also deeply troubled by the idea that additional mobile sources of ozone-depleting pollutants will be able to operate in the United States while avoiding many of the consequences

that drivers in Maryland face due to our non-attainment of ozone standards.

Finally, I am concerned about the impact that an influx of Mexican trucks may have on jobs in the trucking industry in the United States – particularly in areas that are relatively close to the U.S.-Mexican border.

Today's hearing will begin our assessment of these critical issues – but I am also hopeful that this will be just the first hearing on this issue.

I believe it is critical that we continue our oversight after Mexican trucks begin crossing the border so that we can assess all aspects of this new policy – and so that we can

determine if allowing Mexican trucks to travel on U.S. highways is in our nation's best interest.

I commend the Chairman for his diligence on this issue and yield back.

TESTIMONY
OF
JACQUELINE S. GILLAN
VICE PRESIDENT
ADVOCATES FOR HIGHWAY AND AUTO SAFETY

BEFORE THE

HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

REGARDING: U.S./MEXICAN TRUCKING
SAFETY AND THE CROSS BORDER DEMONSTRATION PROJECT

MARCH 13, 2007

750 FIRST STREET, NE, SUITE 901, WASHINGTON, DC 20002 • 202-408-1711

Statement of Jacqueline Gillan
Vice-President Advocates for Highway and Auto Safety
On U.S./Mexican Trucking: Safety and the Cross Border Demonstration Project

Before the
Subcommittee on Highways and Transit
House Transportation and Infrastructure Committee
United States House of Representatives
Washington, D.C.

March 13, 2007

I. Introduction.

Good morning. I am Jackie Gillan, Vice-President of Advocates for Highway and Auto Safety. I wish to commend the Subcommittee on Highways and Transit for scheduling this hearing and continuing its careful oversight and scrutiny of the safety issues involved in opening the Southern U.S. border to interstate and foreign truck commerce throughout the United States.

I also appreciate the opportunity that you have provided me to list the reasons why the recently announced border "pilot program" is an exceptionally unwise and unauthorized public safety policy. Because only one witness representing the views of highway and truck safety groups was asked to testify, I wish to state that all of the preeminent truck safety groups that have been at the forefront of federal and state legislative initiatives to prevent truck crash deaths and injuries, including Public Citizen, Citizens for Reliable and Safe Highways (CRASH) and Parents Against Tired Truckers (P.A.T.T.), support the views expressed in my statement concerning opening the Southern border under the guise of a pilot program.

Let me begin by stating for the record that the Federal Motor Carrier Safety Administration (FMCSA), the agency within the U.S. Department of Transportation (DOT) responsible for overseeing motor carrier safety in the U.S. – including trucks crossing over the Southern border – is just not up to the job. I have been involved in truck safety issues for over 15 years and worked with Democratic and Republican Members of Congress in helping to craft the legislation that created FMCSA in 1999. The agency has never met any of its safety goals, even after weakening them repeatedly these past seven years, has had major safety regulations unanimously overturned by the courts, has ignored Congressional direction to advance and improve safety and completely ignores its statutory mandate to make safety its highest priority. For the record, I would like to submit investigative research articles written in 2006 from two leading newspapers, *The New York Times* and *The Dallas Morning News*, reporting on serious and chronic problems with the agency's programs and policies that put trucking interests first and the safety of the American public last. I would also like to submit for

the record a list containing several Congressional safety mandates that FMCSA has ignored for many years.

I believe one of the best responses to the Administration's announcement to open the Southern border was contained in an Associated Press article published on February 23, 2007. "National Transportation Safety Board (NTSB) member Debbie Hersman questioned how the U.S. could spare sending inspectors to Mexico when only a tiny percentage of the hundreds of thousands of U.S. truck companies are inspected every year. 'They lack the inspectors to conduct safety reviews of at-risk domestic carriers,' Hersman said. 'That situation only gets worse if resources are diverted to the border.' " The NTSB also just scathingly criticized FMCSA for its extraordinarily poor record of safety enforcement and oversight in the February 21, 2007, hearing on the horrific fire and consequent deaths of residents at an assisted living facility in Texas who were fleeing the approach of hurricane Rita in a hired motorcoach. When it comes to ensuring the safety of commercial vehicles on U.S. highways, FMCSA's record over the past seven years is as dismal as that of the Federal Emergency Management Agency (FEMA) response to hurricane Katrina.

II. The Proposed New Pilot Program.

At the outset, the DOT's recent announcement appears to be a calculated, cynical move intended to ensure that the border is open to all commercial traffic regardless of the implications for highway safety. The proposed pilot program ignores that fact that federal law prohibits any vehicle from crossing the border until all safety requirements in Section 350 of the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 2002 (2002 U.S. DOT Appropriations Act), P.L. 107-87, are fully completed. Section 350 makes no exceptions for compliance with all elements of its requirements in subsections (a), (b) and (c). These obligations must be fully complied with before ANY truck is permitted to cross the border. What Secretary Peters proposes is to comply with some parts of Section 350 and assert that the border can be open in a piecemeal fashion. Her proposal does not comport with the law.

The announcement of the pilot program on February 23, 2007, was accompanied by little specific information about the requirements participating motor carriers and drivers would have to meet. There were absolutely no details or information about the pilot program plan, the study hypothesis, the criteria for selecting participating carriers, how and what data would be collected, what would constitute a justified finding from the data for making any safety determinations, the criteria for terminating participants, what objective measures would be used to determine successful completion of the pilot program and whether there would be any independent oversight of the program. Even at the Senate Committee on Appropriations hearing on this matter, before the subcommittee on Transportation, HUD and Related Agencies, held last Thursday, March 8, 2007, Secretary of Transportation Peters was unable to clarify essential details on any of these issues other than to state that there would be two oversight committees of unknown membership since few if any people had agreed to serve on those committees. It is clear that despite more than two years of work to develop a NAFTA trucking pilot program

(according to the DOT Cross Border Truck Safety Inspection Program fact sheet on the DOT website), not even the most basic organizational planning and preparation to conduct a scientific and objective test for opening the southern border was invested in this pilot program prior to its announcement just over two weeks ago.

The lack of information and transparency on this pilot program is also reflected in FMCSA's failure to respond to a request for records Advocates filed under the Freedom of Information Act (FOIA). Although federal law requires a release of records within 20 working days, no records have been released even though over four months have elapsed since the FOIA request was filed on October 17, 2006. It appears to be no coincidence that Advocates' FOIA request has been stonewalled as DOT prepared in stealth to announce its pilot program.

Furthermore, neither in the announcement of the pilot program nor in the testimony of Secretary Peters in the Senate was there any mention that the pilot program would comply with the safety and procedural requirements of Section 4007 of Transportation Equity Act for the Twenty-First Century (TEA-21), Pub. L. 105-178 (1998), codified at 49 U.S.C. § 31315(c). That law provides the template that DOT must follow for pilot programs that test innovative approaches to motor carrier, commercial motor vehicle and driver safety. This novel attempt to experiment with safety on U.S. highways, if permissible at all, certainly falls within the ambit of the pilot program statute.

It is no coincidence that the Secretary of Transportation announced a limited pilot program that includes just 100 Mexico-domiciled trucking companies and a test period that will conclude in just 12 months. This select group of motor carriers almost certainly will not be representative of all Mexico-domiciled companies, vehicles and drivers that will be allowed across the border once the pilot program is completed and prematurely declared a "success."

In addition, the abbreviated 12-month duration of the pilot program is shorter than any previously considered or authorized FMCSA pilot program and only one-third of the three-year maximum time limit allotted by Congress for such programs in current law. As a result, there is no possibility that this pilot program will achieve the goal of collecting sufficient safety data to allow for accurate and reliable analysis of the safety issues at stake.

This pilot program is intended to serve as a show-piece under NAFTA in order to permit the Secretary to proclaim victory and declare the entire Southern border open to unfettered long-haul truck commerce before the end of 2008. In order to serve the public properly and protect safety, we must deal realistically with the many safety issues that are yet to be resolved before the border is in fact ready to be opened to all commercial vehicles.

III. Summary of Recommended Actions.

Mister Chairman, opening the Southern border for NAFTA trucks is akin to a perfect storm. It is a predictable disaster. The U.S. agency responsible for overseeing the public safety for large trucks, FMCSA, is incompetent. The staff administering the law is largely indifferent and regularly ignores its statutory responsibilities. The trucking regime in Mexico is not ready for safe entry onto U.S. highways. Too often in the last few years we have seen this deadly combination fail the American public, as in the hurricane Katrina and the Walter Reed Hospital debacles. And we have seen that once we embark on a course of action, it is impossible to take it back. My testimony today will address these issues in great detail. We urge the Subcommittee to stop the border from being opened.

It is clear that the enactment of the Murray/Shelby language in Section 350, of the 2002 U.S. DOT Appropriations Act, has fostered long overdue changes and improvements in FMCSA's activities. Nevertheless, the border is still not ready to be opened for NAFTA truck travel throughout the U.S. Let me be clear, we do not call for a permanent ban on NAFTA commercial traffic at the southern border. But until we are certain that everything has been done to ensure public safety, the border should remain closed to long-haul interstate traffic. Permitting this pilot program to proceed before the border is actually ready to be opened could be disastrous. For that reason, this Committee needs to step in on behalf of the public.

I will briefly summarize the actions that still need to be taken to protect public safety at the border.

► Do not allow the ruse of a fake pilot program to be used to justify opening the border.
► Ensure that all Section 350 requirements, including section (a), (b) and (c) as the law commands, have been fully completed before any truck is permitted to cross the border, including that:

- Security issues for hazmat operations have been satisfactorily resolved;
- Sufficient inspection resources are available at all designated border crossing points for verifying bus driver commercial licenses and Commercial Vehicle Safety Alliance (CVSA) decals;
- Alcohol and drug testing regimes are fully compliant;
- All data requirements are fully compliant;
- Truck inspection facilities are capable of requiring Level 1 inspections in close proximity to each border crossing where trucks are allowed.

► Ensure that DOT complies with Section 4007 governing the conduct of pilot programs.
► Require DOT to document that every state will actually enforce state laws to issue out of service orders to foreign vehicles that do not have proper operating authority.
► Provide that certification of compliance with U.S. safety standards is enforced for all commercial vehicles.
► Require NTSB investigations of fatal or injury-producing crashes involving cross-border trucks.

► Require that commercial vehicles entering the U.S. are equipped with electronic on-board recorders to document hours of service.
► Require DOT to respond to outstanding FOIA requests or these issues in full, with no withholding of any records.

IV. Background: The Border Zone and NAFTA.

In the Bus Regulatory Reform Act of 1982, Pub. L. 97-261 (1982), Congress imposed a legislative moratorium on granting operating authority to both Mexican and Canadian motor carriers seeking to operate in the U.S. but provided for Presidential modification of the moratorium. Although the moratorium was lifted almost immediately for Canada-domiciled motor carriers, it remains in effect for Mexico-domiciled motor carriers. Currently, Mexico-domiciled motor carriers operate mainly in a narrow strip called a commercial zone along the Southern borders of the four southwestern states contiguous with Mexico. The "border zones" in California, Arizona, New Mexico and Texas vary in size between three and 20 miles inland from the U.S. border.

In December 1992, Canada, Mexico and the U.S. signed the North American Free Trade Agreement (NAFTA). NAFTA required the governments to reduce trade barriers and promote open, unfettered trade across all three countries, including free movement of commercial motor vehicles transporting freight and passengers. NAFTA also sought to harmonize differing laws, policies and regulations governing major areas of trade, although each country was permitted to maintain its regulations regarding health, safety and environmental protection. NAFTA was invoked immediately as the justification for eliminating the Southern border operating restrictions on Mexico-domiciled motor carriers and allowing them unfettered access to the remainder of the U.S., as well as intercontinental access to Canada, as long as U.S. requirements for truck and bus safety design, commercial motor vehicle freight (including hazmat) and passenger operations, and driver qualifications were adhered to.

NAFTA required complete border opening to commercial traffic by December 18, 1995, even though no assessment had been made about the safety consequences. However, on that same day, the President postponed implementation of NAFTA cross-border interstate trucking privileges for Mexico-domiciled motor carriers based on concerns both for highway safety and environmental issues involving diesel emissions. The U.S. DOT Secretary subsequently announced that Mexico-domiciled trucks would continue to have access only to the four southwestern states' commercial zones until U.S. safety and security concerns were satisfactorily addressed.

Oversight investigations and reports conducted by U.S. government agencies in the 1990s painted a dismal picture both of Mexico-domiciled motor carrier safety and of the poor quality of preparation and level of readiness of U.S. federal and state enforcement officials to handle the potential number of Mexico-domiciled trucking and bus companies that might apply for operating authority to transport freight and passengers throughout the U.S. and into Canada. These and other concerns about commercial motor vehicle safety at the Southern border prompted Congress to take action

to respond to the shortage of resources and programs to provide for adequate inspection of Mexico-domiciled commercial motor vehicles and oversee safety compliance with U.S. laws and regulations. The 1998 Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, responded to the poor inspection effort at the U.S.-Mexico border by allowing up to five percent of Motor Carrier Safety Assistance Program (MCSAP) funds to be directed to border enforcement efforts, and by requiring the Secretary of Transportation to review the qualifications of foreign motor carriers seeking operating authority in the U.S.

Following enactment of TEA-21, however, government studies continued to find violations by Mexico-domiciled motor carriers, including widespread violations of registration, identification numbers, illegal operation beyond the commercial zones in the border states, and also showed multiple, serious safety violations such as no licenses, no medical certificates, no logbooks and noncompliant safety equipment.

Nevertheless, after a NAFTA tribunal ordered the U.S. to open the border for commercial motor vehicles or face permanent trade sanctions, in February 2001, the U.S. stated that it would comply with its NAFTA obligations and allow Mexico-domiciled motor carriers to operate beyond the commercial zones by January 2002. In clarifying the action, the Secretary of Transportation stated that ". . . every Mexican firm, vehicle and driver that seeks authority to operate in the U.S. – at the border or beyond – must meet the identical safety and operating standards that apply to U.S. and Canadian carriers." Testimony of Secretary of Transportation Norman Y. Mineta before the Senate Commerce, Science and Transportation Committee (July 18, 2001).

The concern in Congress over motor carrier safety at the Southern border continued to mount as a result of oversight reports by the DOT Office of Inspector General (IG) and the Government Accountability Office (GAO), along with independent assessments by national safety organizations, documenting the poor and often belated administrative response of the DOT to the growing number of Mexico-domiciled motor carriers seeking entry at the Southern border. These oversight findings showed that the agency's plan for conducting a safety application and monitoring system was highly inadequate. Congressional concern resulted in passage of the Murray/Shelby Amendment, Section 350 of the 2002 DOT Appropriations Act. That provision, which was developed in this committee, imposed numerous highly specific safety requirements and processes that FMCSA had to comply with prior to permitting any Mexico-domiciled motor carrier to operate beyond the border zones. A litany of provisions and preconditions to the opening of the border that is, I dare say, well known to the members of this Subcommittee, addresses many, but not all, of the safety concerns at the border.

That legislation also gave the DOT IG a major oversight role in verifying that certain preconditions to Mexican long-haul truck commerce were fulfilled. Carrying out that responsibility has involved a series of follow-up audit reports because, as of January 2005, the date of the last such audit, the IG could not verify that DOT had in all respects completed the full slate of requirements in Section 350. A further IG audit report is expected in a few weeks. I find it shocking that despite the importance of this action and

the key role of the IG in the process, the DOT decided to open the border on February 22, 2007, shortly before the next IG report is to be submitted to Congress.

V. Section 350 Has Been Essential in Advancing Motor Carrier Safety.

It is indeed fortunate that the circumstances of this precipitous decision to begin opening the border have been controlled by the foresight and wisdom of this Committee. The prudent action of the Senate Committee on Appropriations, which inserted Section 350 into the 2002 DOT Appropriations Act, resulted in detailed requirements for U.S. DOT compliance, including oversight and corroboration of key features of border safety preparedness by the DOT IG's office. Without that crucial legislative action, there would have been a very different outcome in recent years to the safety of cross-border truck and bus operations by Mexico-domiciled motor carriers.

The detailed requirements of Section 350 impose preconditions to opening the border and govern the verification of numerous safety requirements controlling the potential operation of long-haul commerce in the U.S. by Mexico-domiciled motor carriers. In addition, Section 350 also applies to the safety quality of the short-haul drayage operations confined to the Southern commercial zones. There should be no doubt that, without the important safety controls of Section 350, the Southern border would already have been opened without the safeguards called for in the legislation. Without Section 350, much more dangerous trucks and buses would have crossed into the U.S. and operated freely on all of our highways, and the losses of lives and the injuries inflicted by such a foolhardy decision would have mounted month by month in state after state.

By its very terms, Section 350 includes two types of benchmarks. First, all of the substantive provisions of section 350(a) must be completely fulfilled in all respects before the Secretary of Transportation can review or process an application by a Mexico-domiciled motor carrier for authority to operate beyond the U.S. commercial zones. Second, all substantive requirements of section 350(b) and (c) must be fully completed before a single vehicle (truck or bus) owned or leased by a Mexico-domiciled motor carrier is permitted to operate beyond the U.S. commercial zones. The terms of the statute are unequivocal and only the completion of all those pre-conditions will satisfy the legal requirements of Section 350.

The enlightened safety approach of Section 350, however, does not exhaust the important safety issues relevant to the opening of the border. Beyond the four corners of Section 350 there are a number of other serious, real-world concerns that must be addressed and that preempt any "pilot program" attempt to short circuit border safety.

VI. Mexico-Domiciled Motor Carrier Safety Is Still Dangerously Deficient.

As you know, the Secretary certified on November 20, 2002, that authorizing Mexico-domiciled motor carrier operations in the U.S. did not pose an unacceptable safety risk. That certification certainly should not have been made with the facts then

before the Secretary. At the time of the certification, the results of U.S. inspections and of the very few compliance reviews that had been conducted portrayed a horrific record of poor safety compliance by Mexico-domiciled trucks and buses conducting operations in the Southern commercial zones. Drivers from Mexico were regularly found without valid Mexican commercial driver licenses, a wide range of hazardous materials (hazmat) violations were constantly cited, Mexico-domiciled trucks and buses were crossing our Southern border into the U.S. at illegal points of entry, and trucks and buses from Mexico had consistently high rates of equipment defects such as bad tires and inoperative brakes. This raises a concern regarding the sufficiency of the certification issued by the Secretary and whether it was intended to evade the Congressional intent behind Section 350 by sacrificing safety for expediency.

The current status of cross-border trucking operations by Mexico-domiciled carriers is still alarming. Drivers coming into the U.S. from Mexico still have high rates of violations. For example, the FMCSA's "NAFTA Safety Stats" on its Analysis and Information Web site shows that for 2005, the latest year that figures are posted, 21.5 percent of Mexico-domiciled commercial motor vehicles were placed out of service for vehicle defects. Of these, fully 17.5 percent were found to have their brakes out of adjustment. Bad brakes on Mexico-domiciled trucks and buses have been a chronic border safety problem for years.

Similarly, when drivers cross over into the U.S. in trucks and buses from Mexico, over 15 percent do not even have any paper logbooks when they are asked for their records of duty status (RODS), and almost one in four drivers does not even have their own country's commercial driver license, the Licencia Federal de Conductor. In addition, one out of every 10 drivers from Mexico does not even have the proper license for the type of commercial motor vehicle they are driving. As for hazmat being hauled into the U.S., a very frightening aspect of cross-border trade for both safety and security concerns, nearly 22 percent of the vehicles transporting hazmat used prohibited placards in 2005 for identifying the nature of the dangerous cargo that was being hauled across the border, more than three times the rate for U.S. motor carriers hauling hazmat.

VII. FMCSA Has a Poor Record of Ensuring the Safety of All Truck and Bus Operations in the U.S., Including Mexico-Domiciled Motor Carriers in the Border Zone.

On the basis of this ongoing poor safety record of border-zone operations by Mexico-domiciled motor carriers, the U.S. DOT asks that we nevertheless suspend belief and good judgment and accept on faith that the trucking companies from Mexico hand-picked to participate in the so-called "pilot program" will be radically different in the safety of their operations and management. This, of course, contradicts the design of a true pilot program. DOT has implied that it will maintain intensive oversight of the companies selected to conduct U.S. long-haul operations.

This claim starkly contrasts with the poor record of FMCSA oversight of domestic motor carrier operations and the current Mexico-domiciled commercial zone

trucking operations. There were 14,000 active motor carriers domiciled in Mexico conducting operations in the U.S. in 2005. However, only 106 compliance reviews were conducted on Mexico-domiciled motor carriers that year, and that figure represents a decline from 236 in 2004 and 268 in 2003. The most intensive safety evaluation of a motor carrier, the compliance review, has slipped ***by more than 60 percent in only two years.*** The 2005 figure represents a comprehensive safety evaluation ***of only three-quarters of one percent (0.75%)*** of Mexico-domiciled motor carriers operating in the U.S. border zone. This is an even poorer oversight record than FMCSA's recently criticized failure by the members of the National Transportation Safety Board at a public hearing on February 21, 2007. Members of NTSB criticized FMCSA for conducting severely inadequate numbers of compliance reviews for domestic carriers, only about 1.5 percent each year. Even at its height in 2003, the best year for the agency and its state partners in conducting compliance reviews on Mexico-domiciled motor carriers, ***less than two percent were performed.***

The agency estimates that there were 4,575,887 crossings into the U.S. through the 24 recognized ports of entry by Mexico-domiciled motor carriers operating 41,101 power units (tractors) that engage in millions of trailer movements. But only 180,061 inspections on these carriers' tractors and trailers were performed in 2005. And that disappointing number of inspections resulted in 21.3 percent of the vehicles being placed out of service for non-compliance with the Federal Motor Carrier Safety Regulations. This exceptionally poor inspection record does not encourage an optimistic view that FMCSA will inspect vehicles operated by long-haul carriers participating in the pilot program.

This meager oversight performance by FMCSA does not augur well for placing any trust in DOT's assurances that the participants in the pilot program will be closely scrutinized for their safety performance. Even if they are, that closer scrutiny could come at the expense of even further declines in FMCSA's safety evaluation of border-zone-only Mexico-domiciled motor carriers. It has to be stressed that the agency has taken on new responsibilities in recent years that further dilute its resources, such as performing safety audits on approximately 48,000 new entrant domestic motor carriers. So it is clear that FMCSA overwhelmingly puts its faith in controlling the safety of border-zone-only Mexico-domiciled carriers with federal and state roadside inspections. The agency is doing almost nothing to evaluate the safety management controls, drivers and equipment of these carriers operating in the Southern commercial zones by use of its most intensive safety evaluation, the compliance reviews. And it never has.

None of the figures that I have cited from FMCSA's own data reassures us that DOT is on the job ensuring that Mexico-domiciled motor carrier safety is being dramatically improved. Yet, against this backdrop of poor safety performance and meager oversight efforts, DOT now wants to find a way to justify opening our borders not just to limited operations in a narrow swath of roads in the four Southern border states, but also to long-haul foreign commerce traveling throughout the U.S.

VIII. Several Major Areas of Mexico-Domiciled Motor Carrier Safety and Oversight Remain Seriously Defective and Jeopardize Safety for Everyone.

a. The States Are Not Stopping Border-Zone-Only Mexico-Domiciled Motor Carriers from Operating throughout the United States.

Current information shows that many states still are not ready to deal with truck commerce coming from Mexico. Dozens of states are still not placing Mexico-domiciled trucks and buses out of service when they are found to be operating illegally beyond the Southern commercial zones. While all states may now have in place the legal basis for placing Mexico-domiciled vehicles out of service that do not have operating authority, as required by Section 350(a), many states are not exercising that authority through enforcement actions. This undermines the safety goals Congress intended to achieve in passing Section 350.

Although FMCSA issued an interim final rule in August 2002 requiring state inspectors to place out of service any commercial vehicles operating without authority or carrying cargo or passengers beyond the scope of their authority, the fact is that about half the states are apparently not actually using their new authority to place Mexico-domiciled motor carrier trucks and buses out of service if they are found with illegal operating authority. [67 FR 55162 (Aug. 28, 2002).] When the DOT IG issued the last audit of cross-border motor carrier safety, the report emphasized that the states were apparently not even placing border-zone-only trucks and buses from Mexico out of service when they were found to be operating beyond the commercial zones. "Section 350 requires that measures are in place to ensure that effective enforcement actions can be taken against Mexican motor carriers. This includes taking action against Mexican carriers that do not have proper operating authority." [*Follow-Up Audit of the Implementation of the North American Free Trade Agreement's (NAFTA) Cross Border Trucking Provisions – Federal Motor Carrier Safety Administration*, Report Number MH-2005-032, Office of the Inspector General, United States Department of Transportation, January 3, 2005.]

If many states are still not actually stopping domestic trucks and buses that don't have valid registrations from operating, it is certain that many of those states are not actually placing foreign motor carriers out of service if they are found to be operating beyond the scope of their legal authority. The DOT IG in the latest published report on the Southern border, *op. cit.*, dated January 2005, pointed out that, despite confirming that all states were equipped with the authority to place carriers out of service that are found to be operating with invalid authority from FMCSA, only four of 14 states interviewed in 2004 by the staff of the DOT IG were found to be actually placing Mexico-domiciled trucks and buses out of service because of a determination of illegal operating authority.

Over two years later, there seems to have been no improvement. Poor state enforcement practices for Mexico-domiciled motor carriers found without proper operating authority remains an unresolved issue.

In his testimony before the Subcommittee on Transportation, HUD, and Related Agencies of the Senate Committee on Appropriations, delivered on March 8, 2007, it is apparent that the IG still has no confirmation that all the states are actually stopping trucks and buses from Mexico operating either without any legal authority or operating beyond the scope of their border-zone-only legal authority. The IG testified only that all states now have a rule in place allowing them to stop trucks and buses from Mexico from continuing to operate if they have illegal operating authority. He did not assert that this rule is actually being used all over the U.S. to enforce operating authority violations. In fact, the IG points out that some states' officials didn't even know how to find out from FMCSA whether a foreign motor carrier had legal operating authority and others did not have the communications equipment available to contact FMCSA to make such an inquiry. The uncertainty in the IG's testimony clearly led him to then state that he will continue to monitor this issue.

It should be apparent to the committee that Mexico-domiciled motor carriers are not being inspected often enough, they receive few compliance reviews each year, the vehicles have high rates of crucial safety equipment defects such as brake misadjustment, drivers often are without logbooks for hours of service compliance or their own national drivers' license, and the states do not appear to be putting them out of service and preventing them from operating when they exceed their authority to operate beyond the border zone. It is against this backdrop of poor safety performance and poor federal and state oversight that DOT proposes to advance a pilot program to allow up to 100 Mexico-domiciled trucking companies to haul freight throughout the U.S. It is inconceivable that a similar pilot program would ever be proposed by the U.S. DOT to accommodate foreign airlines seeking to operate in this country if the same safety flaws and failings existed. There would be a deafening outcry in Congress and by the public if such an ill-advised and dangerous proposal were suggested by the Administration.

b. Additional Safety Problems with Mexico-Domiciled Motor Carriers.

As the committee is well aware, Section 350 set forth numerous requirements for fulfillment by the U.S. DOT and for oversight and verification of completion by the Inspector General. The January 2005 IG report listed several major items that were unfinished or inadequate and still needed to be addressed by FMCSA. First and foremost, our motor carrier safety personnel from FMCSA must be allowed to conduct on-site safety audits at each Mexico-domiciled motor carrier's place of business to assess its management controls, equipment safety, and driver qualifications. Next, Section 350 requires that a full compliance review must be performed before a carrier may be given permanent operating authority for long-haul commerce in the U.S. To the best of our knowledge, no safety audits yet have been performed and, of course, no compliance reviews have been conducted determining that Mexico-domiciled trucks are safe enough to have permanent registration.

I am not going to recite every Section 350 requirement for the committee this morning. However, I want to emphasize that there are serious concerns about several

items in the long roster of Section 350 requirements and allied issues that must be resolved before the border can be opened to even limited long-haul commerce from Mexico.

Information about Convictions and License Suspensions and Revocations of Drivers from Mexico Is Unreliable

A major issue of concern is the quality of the data transmitted to FMCSA by the states concerning driver records. In the January 2005 audit report on Mexico-domiciled motor carriers, the IG pointed out that data from the states were lacking on driver convictions and license suspensions of truck and bus operators from Mexico.

Serious Questions on Drug and Alcohol Testing and Medical Examinations/Physical Fitness of Drivers from Mexico Are Not Resolved

Issues regarding drug and alcohol testing and the physical fitness and medical standards applied to truck and bus drivers in Mexico as a condition of commercial driver licensure also remain active concerns. It appears as though the issue of drug and alcohol testing has not been resolved.

Section 350 requires documented proof that all cross-border foreign drivers are complying with all of the U.S. commercial driver requirements for drug and alcohol testing. This is particularly important for Licencia Federal de Conductor drivers who are providing samples in Mexico and then sending them to U.S. labs for evaluation. The Inspector General stated in the January 2005 report that collection facilities and procedures in Mexico are not certified. This means that the security of the samples is unknown. Let me emphasize again to the committee that this is a major safety concern for all cross-border operations by Mexico-domiciled motor carriers, not just those few companies that are carefully selected to participate in a "pilot program." Even if the select group of trucking companies from Mexico has all drivers tested at approved U.S. drug and alcohol testing facilities, that does not signify completion of the pre-conditions of Section 350 or guarantee that all drivers crossing the border after the pilot program ends and the border is opened will be subject to U.S. drug and alcohol testing requirements.

In addition to the issues that are specifically relevant to Section 350, the safety community has serious concerns about the medical standards and physical fitness requirements for Licencia Federal de Conductor holders. It is well-known and recently acknowledged by both FMCSA and the states in a pending rulemaking action integrating the Commercial Driver License (CDL) with the federally required medical certificate that commercial drivers "doctor-shop" to find health care providers that will find them physically fit to operate a commercial motor vehicle in interstate commerce. 71 FR 66723 (Nov. 16, 2006). In fact, thousands of these drivers have disqualifying medical conditions that would prevent the person conducting the physical examination from signing off on the required medical certificate. Some of the disqualifying medical conditions listed in FMCSA's regulations are unquestionably major threats to public safety if a commercial driver operates a big rig or a motorcoach with these diseases or impairments.

The safety community is also deeply concerned over the quality of the medical examination and physical fitness requirements and process in Mexico for all Licencia Federal de Conductor holders operating in the U.S. Although this was not a specific, itemized requirement of Section 350, it has become a growing concern with the gradual realization over the past few years that fraudulent and invalid medical certification among even U.S. commercial drivers is a pervasive, chronic problem that FMCSA is just beginning to attempt to curtail at the strong urging of the National Transportation Safety Board. I ask the committee specifically to investigate this issue for all cross-border bus, motorcoach, and truck operations conducted by Licencia Federal de Conductor holders in the U.S. We believe that there may be a similar problem in Mexico of drivers finding ways around medical examinations and fitness requirements for commercial licensure. If so, this threatens public safety here in the U.S.

Excluding Hazardous Materials, Bus Long-Haul Operations Violates Section 350

Apparently, DOT is not contemplating long-haul commerce in the U.S. either by Mexico-domiciled hazardous materials (hazmat) haulers or by bus or motorcoach companies immediately, but has not foreclosed such cross-border transportation in the future. Security issues for hazmat operations throughout the U.S. have not been satisfactorily resolved by the Transportation Security Administration. As for buses and motorcoaches coming into the U.S. from Mexico, the DOT IG's January 2005 report found that sufficient inspection resources are not available at all designated border crossing points for verifying bus driver commercial licenses and for inspecting buses that have expired Commercial Vehicle Safety Alliance decals. It appears that, as of March 2005, those inadequate bus inspection procedures had still not been corrected. The failure to address and complete these issues as required by Section 350 presents a legal prohibition that DOT cannot evade by excluding hazmat operators and buses from the pilot program. Section 350 expressly states that "[n]o vehicles owned or leased by a Mexican motor carrier may be permitted to operate beyond" the commercial zones until all pre-conditions have been met. There is no exception for vehicles of motor carriers that participate in a supposed pilot program.

FMCSA Relies on Poor Data and a Defective Procedure for Identifying High-Risk Motor Carriers

The next issue that needs to be addressed is the chronic problem of the poor quality data supplied to FMCSA that it relies on to monitor commercial motor vehicle and motor carrier safety. The DOT IG and the GAO, in separate reports over the past several years, including reports in 2004 and 2005, emphasized the unreliability of the safety data on motor carriers that FMCSA uses to operate its safety scoring algorithm, the Safety Status Measurement System, or SafeStat as it is commonly referred to.

The GAO report found that one-third of commercial vehicle crashes that the states are required to report to FMCSA were not reported, and those crashes that were reported were not always accurate, timely or consistent. *Highway Safety: Further Opportunities Exist to Improve Data on Crashes Involving Commercial Motor Vehicles*, GAO-06-102 (Nov. 18, 2005). Three years ago, following a DOT Inspector General report pointing

out how unreliable data were used by FMCSA, the agency removed the overall safety score for motor carriers from its Web site. *Improvements Needed in the Safety Status Measurement System*, Report Number MH-2004-034, Office of the Inspector General, United States Department of Transportation (Feb. 13, 2004). Those data are still missing from the agency's web site. In addition, the DOT IG found in that report that 50 percent of Mexico-domiciled motor carriers in the U.S. claimed that they had no tractor power units in operation.

The Inspector General issued yet another report on FMCSA data quality in April 2006. *Significant Improvements in Motor Carrier Safety Program since 1999 Act but Loopholes for Repeat Violators Need Closing*, OIG Report Number MH-2006-046 (Apr. 21, 2006). The audit found that data quality is still seriously defective and that it undermines several important areas of FMCSA enforcement and substantially reduces the effectiveness of SafeStat to identify high safety risk motor carriers. The DOT IG points out that, although FMCSA adopted a regulation a few years ago requiring registered motor carriers to update their registration every two years, 192,000, or 27 percent, of the registered 702,277 motor carriers did not update their census data on both drivers and trucks despite the requirement of the 2002 regulation. In addition, the report found that forms used by the states to report crash data to FMCSA still do not consistently define a large truck or a reportable crash, resulting in confusion. These failings continue to undermine the reliable data that FMCSA needs. The 2006 report also found that FMCSA, despite the previous February 2004 OIG oversight report, had not taken sufficient action to achieve full updates of motor carrier census data and standardize crash data requirements and collection procedures. Data quality is crucial because the combination of updated, timely census data and crash data is used by SafeStat to rank safety performance of motor carriers and target them for compliance reviews and inspections. The OIG stressed in this recent report that, without these critical data, FMCSA cannot accurately identify the high-risk motor carriers.

It remains to be seen what the DOT IG's next report, expected in less than two months, will find regarding the increased data quality and accuracy of SafeStat to identify risk-prone long-haul motor carriers operating throughout the U.S. The January 2005 report documented that ***one-third*** of the crashes that actually occurred were not reported to FMCSA from the states. The Inspector General's most recent findings also need to be matched against FMCSA's request for funding for FY2008 that, among other things, still acknowledges that inadequate data on motor carrier safety are being provided by the states because the submissions involve either under-reporting, mistaken data entries or late transmission to the agency.

It is doubtful that, even with timely, complete, accurate data reporting, FMCSA can identify the high-risk motor carriers. The other problem with the agency's safety monitoring system is the SafeStat system itself. This arcane method of scoring motor carrier safety has been repeatedly criticized, including by an Oak Ridge National Laboratory report on SafeStat. The Oak Ridge analysis showed that the basis of SafeStat ultimately is subjective, based upon expert consensus opinion or judgment, and therefore has no meaningful statistical relationship to the data used to operate the system's

algorithm for detecting high safety risk motor carriers. K. Campbell, R. Schmoyer, H. Hwang, *Review of the Motor Carrier Safety Status Measurement System*, Final Report, Prepared for the Federal Motor Carrier Safety Administration, Oak Ridge National Laboratory (Oct. 2004). As a result, SafeStat often tapped the wrong motor carriers as safety risks.

Safety organizations have also shown in comments to FMCSA rulemaking dockets that SafeStat is a bankrupt method of identifying dangerous motor carriers, particularly small motor carriers with only a few tractor power units. In addition, the algorithm incorporates a relativist, peer-to-peer safety rating system that has no independent, objective standards for motor carrier safety indexed to specific goals of reducing both the rate and the numbers of annual motor carrier fatalities. But, sad to say, these are the data and this is the system that DOT will rely on to monitor and gauge the safety of both long-haul and short-haul Mexico-domiciled motor carriers.

Prospects for Compliance with Hours of Service Limits Are Poor

Safety organizations are still not satisfied that DOT has a system that will prevent drivers coming into the U.S. from Mexico who are already fatigued and sleep-deprived and present a serious threat to highway safety. In addition, drivers in Mexico are not subject to separate hours of service restrictions specifically tailored for commercial drivers. Apparently, there is only a general working hours limit of eight hours per day that, as far as we can determine on the basis of anecdotal evidence, is not enforced.

Even if commercial drivers with Licencia Federal de Conductor operate in the U.S. within current hours of service limits, those limits are again under legal challenge. Among many other defects, FMCSA refuses to acknowledge that the dramatic increases in working and driving hours it forced on truck drivers in 2003, and again in 2005, inherently foster fatigue and sleep deprivation. Although the 2003 rule was overturned in a scathing opinion from the U.S. Court of Appeals for the District of Columbia Circuit in 2004 (*Public Citizen v. FMCSA,* 374 F.3d 1209 (D.C. Cir. 2004)), FMCSA was undeterred: It attempted to rehabilitate the same failed hours of service rule with some new rationalizations and reissued it in virtually the same form in 2005. That new regulation increases the working hours of a U.S. commercial driver by 40 percent over an eight-day tour of duty and driving hours by 28 percent over the same time span. Commercial drivers can now work 98 hours in eight days and drive 88 hours in eight days. Certain exemptions for short-haul operations in smaller trucks actually allow drivers to work over 100 hours in a week.

This is the so-called "safety" regime that drivers from Mexico will operate within, a regulation that actually fosters worn-out drivers pushed day after day to deliver loads under nightmare schedules forced on them by motor carrier officials and shippers.

The other major problem hobbling any meaningful compliance with U.S. hours of service limits, as liberal as they are, is FMCSA's refusal to require electronic on-board recorders (EOBRs) to record the actual driving time of commercial operators. Despite the fact that the agency was required by Congress, in Section 408 of the Interstate

Commerce Commission Termination Act of 1995, Pub. L. 104-88 (1995), to address the problem of hours of service regulations by evaluating EOBRs, the agency procrastinated until it was compelled by the U.S. Court of Appeals for the District of Columbia Circuit in 2004 to adequately address the problem. The court acted because FMCSA had proposed adoption of EOBRs in the hours of service rulemaking proposal in 2000, 65 FR 25540 (May 2, 2000), but then had a change of heart after strong opposition from major sectors of the trucking industry. FMCSA terminated EOBR rulemaking in 2003 when it issued its first attempt at an amended hours of service regulation. 68 FR 22456 (Apr. 28, 2003). Even then, the agency responded with only an advance notice of proposed rulemaking in September 2004 instead of proposing a long overdue EOBR regulation. 69 FR 53386 (Sept. 1, 2004).

EOBRs are of pivotal importance in lessening the epidemic of hours of service violations in the trucking industry. Several studies and surveys conducted by independent researchers, the Insurance Institute for Highway Safety and the University of Michigan for FMCSA's 2000 rulemaking proposal to amend the hours of service rule have shown repeatedly over many years that hours of service violations are a pervasive, chronic phenomenon among truck drivers. Truck drivers themselves have a poor opinion of the paper logbooks – Record of Duty Status (RODS) – that current FMCSA regulation requires them to maintain if they are operating outside a 100 air miles radius from their work reporting location. Often referred to as "comic books," many truck drivers regularly violate hours of service working time, driving time, and minimum rest time limits and falsify the entries on their paper logbooks. Seasoned drivers also know how to create a paper trail of accessory documents, often demanded by motor carrier enforcement personnel conducting compliance reviews, that just happen to support, or at least not to contradict, the entries in the log books. I use the plural here of "log books" not just to refer to all the RODS maintained by interstate truck drivers, but also the two and sometimes three different log books maintained by just one driver: one that really memorializes hours of service, one for enforcement officials, and yet another for the motor carrier the driver works for.

But despite widespread violation of even the excessive working and driving hours of the current hours of service regulation, FMCSA, in its recent rulemaking proposal, will not abate this epidemic of abuse. 72 FR 2340 (Jan. 18, 2007). The agency disregards all previous research and survey literature on the pervasive violation of hours of service regulation and, instead, argues that EOBRs should be required only for the "worst offenders." These "worst offenders" are those who are detected in compliance reviews as having at least 10 percent of their drivers found to have violated hours of service and then, within another two years, at least 10 percent are found again in a subsequent compliance review to have violated the regulation. Only then would the agency impose a requirement to install and use EOBRs to record driving time.

Please note that this is the agency that conducts only 7,000 to 11,000 compliance reviews each year out of more 700,000 registered motor carriers, an effort, as I have already pointed out, that amounts to about 1.5 percent compliance reviews each year. This is the agency that has just submitted a budget request to Congress stating that it

intends to conduct only 10,000 compliance reviews in both FY2007 and FY2008. This is the agency that states in its EOBR rulemaking proposal that it forecasts about ***465 motor carriers each year would be required to install EOBRs.*** Out of the largest figure of registered motor carriers that we have heard – cited as more than 900,000 by NTSB staff on February 21, 2007, during the NTSB hearing on the Hurricane Rita motorcoach catastrophe – this amounts to ***five one-hundredths of one percent – 0.05% – of registered motor carriers.*** Even if I were to use the lower, published figure from FMCSA on the number of registered motor carriers – about 702,000 – the percentage of motor carriers required to use EOBRs would be ***six one-hundredths of one percent – 0.06%.***

This proposed rule is so utterly ludicrous, so contemptuous of the need to curtail the epidemic of drivers falsifying their log books so they can drive until they literally fall asleep at the wheel, that FMCSA even has the gall in the preamble to argue that it could not find any health benefits for drivers using EOBRs and, therefore, for driving within the legal limits of the current hours of service rule. But this is also in keeping with an agency that repeatedly denies that it could find any adverse health impacts from having dramatically increased the amounts of driving and working time each week for commercial drivers in its 2003 and 2005 final rules amending the hours of service regulation.

If DOT argues that, without EOBRs, it can ensure that long-haul trucks from Mexico will not violate hours of service limits, then it is deceiving the American people. The use of EOBRs in any cross-border long-haul operations by Mexico-domiciled motor carriers must be mandated. Without EOBRs, the risk of crashes from sleep-deprived, exhausted drivers of Mexico-domiciled trucks will be large and will grow.

Compliance of Trucks and Buses Built in Mexico with the Federal Motor Vehicle Safety Standards is Still Unresolved.

Finally, the issue of certification of compliance of trucks with the Federal Motor Vehicle Safety Standards (FMVSS) remains a real safety problem. Federal law requires that vehicles entering the U.S. market must comply with all safety standards that were applicable in the year of their manufacture. FMCSA acknowledges that this requirement pertains to commercial vehicles manufactured in Mexico and driven into the U.S. to engage in commerce. The agency also acknowledges that few commercial vehicles built in Mexico prior to 1996 were built to U.S. safety standards and that even since 1996 some unknown percentage of commercial vehicles built in Mexico does not comply. For example, according to truck manufacturer data, between five and 20 percent of the trucks produced at plants in Mexico were not equipped with antilock braking systems (and slack adjusters), even though that requirement applied to U.S. truck production since March 1, 1997. The FMCSA admits that inspectors cannot be certain if trucks built in Mexican plants comply with U.S. standards unless they have a certification label affixed to the vehicle by the manufacturer. They cannot rely on the vehicle identification number and the vehicle registration alone. This means that trucks and buses that do not comply with U.S. standards and thus could not be sold in the U.S. could be driven into the U.S. to engage in commerce and the carriage of passengers by Mexico-domiciled companies.

This situation creates both a safety concern and an uneven playing field for U.S. manufacturers and motor carriers.

IX. What Happens When The Pilot Program Ends: Open Border Includes Free Passage for CAFTA Trucks.

During her Senate Appropriations testimony Secretary Peters was asked what will take place once the pilot program finishes after 12 months. The Secretary gave no definitive response. It is clear from the way the pilot program has been foisted on the public that once the program ends, the border opens. This is also apparent from the terms of the official "Record of Discussion" document, signed by officials of both Mexico and the U.S., that outlined the pilot program and apparently viewed it as a stepping stone to full cross-border trucking. Statement of Chairman Patty Murray (D-Wash), Hearing on Cross-border Trucking with Mexico, p. 3.

Aside from the unresolved issues of motorcoach and hazardous materials transportation across the U.S. border, another looming problem on long-haul non-U.S. trucking operations in the U.S. is the growing presence of non-North American bus and trucking companies in the U.S. conducting long-haul operations. This issue has been addressed under the Central American Free Trade Agreement (CAFTA) that was ratified by Congress in 2005. Unlike Mexico-domiciled long-haul trucking in the U.S., Central American long-haul truck and bus companies are not subject to any of the restrictions and requirements of Section 350. In fact, FMCSA plans on determining whether they comply with all of the U.S. safety standards, regulations, and law by simply asking each company to sign off on a certification statement. 71 FR 76730 (Dec. 21, 2007). There will be no pre-authorization safety audits as are required in Section 350 for awarding probationary operating authority, for example. The agency will only perform a paper review for awarding operating authority, although FMCSA promises that it will conduct a compliance review within 6-12 months of registering each CAFTA motor carrier and awarding operating authority, and within three months of any existing CAFTA motor carrier already operating in the U.S. This implies, of course, that the carriers already operating throughout the U.S. have never had compliance reviews.

Another issue concerning non-North American motor carriers operating nationwide in the U.S. is FMCSA's statement that it will require them to use only drivers with valid commercial driver licenses and to have those drivers subjected to U.S. drug and alcohol testing. This makes it apparent that, to date, these drivers have not necessarily had valid commercial licenses or drug and alcohol testing. It also begs the question of what is meant by a "valid commercial driver's license." There is a Memorandum of Understanding (MOU) between the U.S. and Mexico adopted 15 years ago that recognizes the Licencia Federal de Conductor as equivalent to the U.S. CDL. One of the many objections to the original U.S.-Mexico MOU was its after-the-fact publication even though many safety organizations did not agree that the Licencia Federal de Conductor is equivalent in quality to the U.S. CDL. I am unaware of any separate agreements formally recognizing the commercial license of each individual CAFTA signatory.

In the preamble of the cited rulemaking action, FMCSA also points out that there are already many illegal motor carrier operations conducted in the U.S. by citizens of Central American nations who drive or fly into the U.S., buy a commercial motor vehicle, and then drive it through the U.S., down across our southern border, through Mexico, and into one of the Central American countries. These vehicles and their drivers have no legal operating authority, no valid commercial driver license, no insurance, and their vehicles may not comply with U.S. safety standards. To address this problem, FMCSA states that it will "educate" southbound non-North American motor carriers and later conduct "periodic strike forces" at the southern border to target non-registered southbound non-North American commercial motor vehicles. The vehicles and their drivers/owners will receive roadside inspection citations and sometimes will be placed OOS.

This is an irresponsible stance that threatens safety because it turns a blind eye towards the operation of commercial motor vehicles and drivers who are illegally operating trucks and buses in interstate movement and violating numerous federal laws and regulations. Why aren't these illegal vehicles and drivers being stopped from operating in the states before they impact highway safety with crashes, deaths, and injuries? Why is FMCSA allowing these vehicles to travel hundreds, perhaps thousands of miles before they are intercepted at the southern border? Why is the primary response an inspection and only ***sometimes*** putting them out of service? If the vehicle and driver are operating dangerously, why would FMCSA send them into Mexico to reach a Central American country, thereby endangering citizens in other countries to the south of the U.S.? Isn't this the agency just washing its hands of an illegal, perhaps dangerous vehicle and driver operating in the U.S.?

These and other questions about CAFTA commercial motor vehicle long-haul operations in the U.S. need to be examined and answered before the southern border is fully open to all commercial motor vehicles from Mexico and Central America.

X. Any Pilot Program Permitting Mexico-Domiciled Motor Carriers to Operate Nationwide Must Comply with Section 4007 of TEA-21.

In light of the many serious safety, legal and oversight concerns that continue to raise red flags and provide clear warnings against even a limited opening of the Southern border, I firmly believe that the proposed pilot program cannot proceed.

If and when such a pilot program becomes appropriate, Congress has already determined the basic requirements that must apply to protect public safety. As mentioned at the start of this testimony, Section 4007 of TEA-21 established the template for all pilot programs conducted by DOT. 49 U.S.C. § 31315(c). Section 4007 was enacted at the specific request of DOT, which sought authority to conduct pilot programs to evaluate alternatives to existing regulations and "innovative approaches to motor carrier, commercial motor vehicle, and driver safety." The announced border pilot program fits squarely within this description and must be governed by the requirements of that law.

Section 4007 requires that, at the outset, the Secretary must provide public notice and seek public comment on the proposed contours of the program and the merits of the trial. In order to proceed, the Secretary must then make a determination, based on the totality of information and evidence, that the safety measures in the pilot program are designed to achieve an equal or greater level of safety than would be the case if there was no program. That is, DOT must make a showing that convincingly demonstrates that the pilot program approach can achieve the same or better level of safety than the *status quo*. At that point, if the pilot program is to take effect, it must include several defining features:

- A scheduled life of no more than three years;
- A specific data collection and safety analysis plan that identifies a method for comparison and a reasonable number of participants necessary to yield statistically valid findings;
- An oversight plan to ensure that participants comply with the terms and conditions of participation;
- Adequate countermeasures to protect the health and safety of study participants and the general public; and
- A plan to inform the states and the public about the program and to identify the participants both to safety compliance and enforcement personnel and to the public.

A specific data collection and safety analysis plan identifying a method for comparison and having sufficient statistical power from which to draw inferences has been the Achilles heel of previous FMCSA pilot program efforts. None of the previously proposed pilot programs were studies that would have survived peer review in the scientific community because they included poor data gathering protocols, lacked controlled comparison groups for gauging the safety impact of the pilot programs, failed to control the numerous confounders of field experiments and generated insufficient statistical strength to draw inferences. FMCSA has a failed record of conducting scientifically sound and useful pilot studies.

In fact, FMCSA does not conduct pilot programs just for determining their safety effects. The programs are chosen to buttress policy preferences that the agency already has formed. Pilot programs conducted in the past by FMCSA have not been chosen to test "innovative approaches" to motor carrier safety or to evaluate whether some relaxation of portions of the Federal Motor Carrier Safety Regulations produces an equivalent or better safety result than compliance. Instead, these efforts have been geared in each instance to provide regulatory relief to a sector of the trucking industry or to foster trucking "productivity," not improve safety. In constructing pilot programs, FMCSA handpicks the very best participants to ensure that the outcome of the trial will justify a policy choice that the agency already wants to advance. Pilot programs promoted by the agency are not scientific efforts to obtain objective information, but show trials conducted to provide cover for a preconceived policy choice.

Pilot programs cause great concern in the safety community because they are experiments with the public serving as guinea pigs on our highways. Although Section 4007 directs that there must be adequate countermeasures adopted to ensure the health and safety of both pilot program participants and the general public, there are no assurances that relaxing regulatory requirements or testing "innovative approaches" to motor carrier safety might not result in terrible tragedies. For this reason, it is imperative that the Committee take extra precautions, beyond the requirements in Section 4007, to ensure safety is the highest priority in the conduct of this pilot program. The Committee should, therefore, take the following steps:

- Ensure that DOT complies with Section 4007 in carrying out any pilot program;
- Require DOT to specify, as part of the detailed description of the pilot program submitted for public comment, the criteria it will use in exercising its authority to revoke participation in the program under Section 4007(c)(3);
- Require that the National Transportation Safety Board (NTSB) investigate every crash by a participating motor carrier, vehicle and driver that involves a fatality or injury;
- Require DOT to specify, as part of the detailed description of the pilot program submitted for public comment, the criteria it will use in exercising its authority to terminate the program under Section 4007 (c)(4); and,
- Require DOT to submit bimonthly reports to Congress on the pilot program including data on all crashes, fatalities, injuries, violations and out of service orders.

Thank you for this opportunity to voice our deep concerns over this initiative. I am happy to answer any questions you may have.

ATTACHMENTS TO THE TESTIMONY OF

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BEFORE THE

HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

REGARDING: U.S./MEXICAN TRUCKING
SAFETY AND THE CROSS BORDER DEMONSTRATION PROJECT

MARCH 13, 2007

Attachments

Page	Document
1	**U.S. Department of Transportation hand out (March 2007)**
3	**Transcript from the Senate Commerce, Science and Transportation Committee hearing on the nomination of Mary Peters to be Secretary of the Department of Transportation (September 20, 2006)**
25	***New York Times* editorial on truck safety (December 10, 2006)**
27	***New York Times* article on trucking rules (December 3, 2006)**
37	***Dallas Morning News* article on drivers bypassing weight stations (December 12, 2006)**
49	***Dallas Morning News* article on truckers' long hours (December 11, 2006)**
55	***Dallas Morning News* article on trucking company reviews (September 19, 2006)**
63	***Dallas Morning News* article on Texas Industries Inc. truck accidents (September 17, 2006)**
65	***Dallas Morning News* article on Wise County, Texas truck deaths (September 17, 2006)**
73	**List prepared by Advocates for Highway and Auto Safety on the Federal Motor Carrier Safety Administration's legislated rulemaking actions and studies, and additional agency actions**

Cross Border Truck Safety Inspection Program

Ready to Deliver Long-Distance Cross-Border Trucking

Trucks Crossing the U.S.-Mexico Border

- Until 1982, trucks from Mexico could drive anywhere in the United States.
- Since 1982, trucks from Mexico have been able to drive only in the roughly 25-mile commercial zone along the U.S. border and can make deliveries in U.S. cities like San Diego, El Paso and Brownsville.
- Cargo destined beyond the commercial zone must be off-loaded and transferred, which has given rise to a highly inefficient international supply chain on our southern border.
- A limited demonstration program to test implementation of the trucking provisions of the North American Free Trade Agreement, supported by Presidents George H.W. Bush and Bill Clinton and approved by Congress in 1993 will allow a small number of Mexican trucking companies to be screened for possible trial authority to make deliveries beyond the commercial zones for one year.
- The companies must pass a safety audit by U.S. inspectors, including a complete review of driver records, insurance policies, drug and alcohol testing programs and vehicle inspection records.
- In two months, Mexico will have published its final application procedures and will begin processing applications from U.S. companies for authority to operate throughout Mexico.
- Since the mid-1990s, the rate of Mexican trucks taken off the road for safety violations has dropped 64 percent, from 59 percent to 21 percent *(comparable to the U.S. average)*.

U.S. Safety and Security Requirements Await Trucks from Mexico

- Since 1995, the federal government has spent more than $500 million to improve border inspection stations and hire more than 600 new federal and state truck inspectors.
- Mexico's trucks and their drivers must meet all U.S. safety and security requirements before they will be allowed to drive beyond the border region.
- Every truck that crosses the border as part of the pilot will be checked – ***every truck, every time.***
- Any truck with a safety violation that poses a risk to the traveling public – no matter how small or large - ***will be stopped*** until the problem is fixed.
- Drivers must have a valid commercial license, proof of medical fitness, and comply with hours-of-service rules.
- Drivers must be able to understand and respond to questions and directions from inspectors.
- Drivers may not be sick, tired or under the influence of drugs or alcohol.
- Trucks must be insured and meet rigorous U.S. safety standards for the entire vehicle, including brakes, steering systems, tires, axles, hoses, fuel tanks, head and tail lamps, turn signals, suspension systems, frame integrity and cargo securing equipment.
- No trucks hauling hazardous materials or buses carrying passengers will be involved in the test program.
- All trucks and all drivers entering the U.S. are screened by U.S. Customs and Border Protection Officers, which could include radiation portal monitoring and x-ray inspections of high risk cargo.
- All drivers must provide advanced cargo information, must meet immigration entry requirements and are subject to the U.S. import requirements.

Good for Consumers

- Every day, nearly $2.4 billion in trade flows between the United States, Mexico and Canada. U.S. merchandise exports to Mexico and Canada are up 157 percent. The economies of all three countries have grown by more than 40 percent since NAFTA was signed.
- 75 percent of this commerce is carried by commercial trucks, but the current system of transferring products from the truck of one country to that of the other costs consumers $400 million a year.
- Long-haul trucking to and from Mexico will allow goods to get to the marketplace as efficiently as possible on both sides of the border which translates into cost savings to the consumer.

Keeping Our End of the Bargain

- President George H.W. Bush signed the historic NAFTA treaty in 1992.
- In 1993, Congress ratified NAFTA and President Bill Clinton signed into law legislation to implement the treaty.

- The trucking provisions of NAFTA were put on hold in 1995. In 2001, a NAFTA dispute resolution panel ruled that the United States was violating its NAFTA obligations by adopting a blanket ban on trucks from Mexico.
- In 2001, Congress approved and President George W. Bush signed legislation detailing 22 safety requirements that must be met before allowing trucks from Mexico to drive beyond the U.S. commercial zones.
- In 2002, U.S. Transportation Secretary Norman Y. Mineta certified that DOT had met each of the 22 requirements set by Congress. The last three audits by the U.S. DOT Inspector General confirm it as well.
- Litigation stymied the DOT program; a 2002 U.S. Ninth Circuit Court of Appeals ruling that barred implementation of the treaty's trucking provisions. The U.S. Supreme Court unanimously reversed the decision in 2004.
- U.S. DOT began working immediately with its Mexican counterparts to develop a NAFTA trucking pilot program.

HEARING OF THE SENATE COMMERCE, SCIENCE AND TRANSPORTATION COMMITTEE SUBJECT: NOMINATION CHAIRED BY: SENATOR TED STEVENS (R-AK) WITNESSES: MARY PETERS, TO BE SECRETARY OF THE DEPARTMENT OF TRANSPORTATION LOCATION: 253 RUSSELL SENATE OFFICE BUILDING, WASHINGTON, D.C. TIME: 2:30 P.M. EDT DATE: WEDNESDAY, SEPTEMBER 20, 2006

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SEN. STEVENS: We've allowed time for the two senators from Arizona to introduce the nominee. Senator McCain, you're the senior senator.

SEN. JOHN MCCAIN (R-AZ): Thank you very much. I remind Senator Kyl of that daily. (Laughter.)

Well, thank you. It's with great pleasure, Mr. Chairman, I introduce to the committee Mary Peters, who's been nominated, as you well know, as the 15th secretary of the Department of Transportation. And of course, all of us are familiar with Mary through her nearly four years of service as the administrator of the Federal Highway Administration from 2001 to 2005. She's a fourth-generation Arizonan, was director of the Arizona Department of Transportation, known as ADOT, prior to taking the helm of the Highway Administration. She gained nearly 16 years of first-hand transportation agency experience during her service at the Arizona Department of Transportation and another four years at the Federal Highway Administration.

I appreciate very much the president of the United States selecting such an outstanding and capable individual to fill this important leadership position. She has a long and accomplished professional record and, Mr. Chairman, she has so many awards I will not repeat them. I would ask my complete statement be made part of the record.

And I would like very much that this committee approve, or consider and then approve her nomination as quickly as possible, as I think it would be good for the country to have her on the job before we go out onto recess, and I thank you for allowing me to make this statement on her behalf.

SEN. STEVENS: (Off mike.) Senator Kyl?

SEN. JON KYL (R-AZ): Thank you, Mr. Chairman. First let me agree with my colleague Senator McCain that it would be very much in the best interest of this country if the nomination of Mary Peters could move forward very expeditiously, first through the committee and then on to the floor of the Senate.

My colleague, of course, traced the career of Mary Peters, a distinguished career focused on transportation issues. I'll just note a couple of things that were not said.

When she was here in Washington as the head of the Federal Highway Administration, of DOT, among other things she led efforts to improve the safety and security of our country's highways and bridges, reduce congestion and institutionalize better fiscal oversight and accountability. And she distinguished herself in the same way when she headed the Department of Transportation in the State of Arizona.

Both Senator McCain and I know Mary Peters personally and so we're obviously biased, but from my place I couldn't recommend more strongly someone who has all of the attributes, not just the skills and the experience, but the personal qualities to be a part of a president's Cabinet, to be advising him, to working with members of Congress. And so when once again she agreed to answer the president's call to leave the warm and sunny weather of Arizona to come back to Washington, I applauded her choice. And I urge the committee to act quickly so that she can begin her responsibilities here as soon as possible serving the people of this country. She's a country -- a person of great integrity and charisma, and I'm very proud to call her a friend and commend her to the committee. SEN. STEVENS: Well, thank you very much, Senator.

In view of the circumstances, meeting in the afternoon as we are, I would suggest that the nominee present her statement and then we'll go around and have senators have an opportunity to question the nominee.

Ms. Peters?

MS. PETERS: Mr. Chairman, thank you so much.

Chairman Stevens, Co-Chairman Inouye, and members of the committee, it is an absolute honor to be here, appear before you today as you consider my nomination for secretary of Transportation. And I sincerely appreciate my home-state senators, Senator John McCain and Senator Jon Kyl, for being here today to introduce me.

I am deeply grateful that President Bush has offered me the opportunity to again serve my country in the field of transportation. I also would like to express my gratitude to my family, whose love and support have made it possible for me to be here today. Now, my husband is home today; however he is with our two brand-new grandchildren. One got out of the hospital eight days ago, one got out of the hospital two days ago. So they are appropriately there taking care of those new babies. I have pictures to bore you with should you like to see those later, but I know they are with me in spirit here today. And my grandchildren have asked me to say their names: Jeremy, Jenna (sp), Charles, Shanna (sp) and Daniel. I love you.

Thank you, Senators. (Laughter.)

SEN. STEVENS: Are there any of your family with you today?

MS. PETERS: No, sir, they are not here.

SEN. STEVENS: Thank you.

MS. PETERS: Mr. Chairman, America's continued economic vitality, our ability to compete in a global economy, and our citizens' high quality of life are all dependent upon dynamic, well-performing transportation systems. And while the current systems have served our nation well, those systems must be

strengthened to meet even greater challenges ahead. The challenges are numerous, and they affect every mode of transportation. Our vital transportation infrastructure is showing signs of aging. Traditional transportation programs and their funding sources are no longer able to keep pace with demand. Increasing congestion on our highways, railways, airports and seaports reduces our nation's economic productivity and consumes our citizens' time. Despite the progress that we have made, transportation safety and transportation security are of greater concern than ever before. I do not take lightly the challenges that I would face, nor the responsibilities that I would accept, should you vote to confirm my nomination.

I believe my 20-plus year career in transportation has given me the hands-on experience, the technical knowledge and the leadership skills necessary to identify and implement the right solutions for these challenges.

For more than 16 years, as Senator McCain has said, I worked for the Arizona Department of Transportation. That position allowed me to gain valuable insight on the way federal policy affects real-life aspects of planning, building and operating transportation systems on state, regional and local levels.

As director of ADOT for the last three years of that time, I oversaw highway, transit, rail and aviation, as well as motor carrier programs, driver licensing, vehicle registration, transportation- related clean air programs, transportation tax collection and distribution. I learned the economics of developing and maintaining transportation infrastructure, as well as the responsibilities and accountabilities necessary when entrusted with public funds.

I was then privileged to serve for nearly four years as administrator of the Federal Highway Administration and had the honor of working with you, with Congress, to develop the important SAFETEA- LU legislation. As administrator, I made safety my highest priority, and if confirmed as secretary I will ensure that safety continues to be the department's highest priority and that safety considerations are built into every transportation decision.

As administrator, I also focused Federal Highway on improving its oversight and accountability for public funds. During my tenure we implemented policies for better management of mega-projects, and I worked very closely with Ken Mead, the inspector general, to eliminate waste, fraud and abuse in the program.

If confirmed, a significant priority will be the reauthorization of the nation's aviation program. I look forward to working with Congress to improve aviation safety, and to identify new approaches for modernizing the air traffic control system, improving the environmental review process for airports, and addressing the aviation needs of small urban communities and rural areas. We must continue to promote the use of public transportation and assist states and communities to maximize transit capacity and reliability. Inner-city passenger rail should be an important component of our nation's transportation network. If confirmed, I look forward to working with Congress to pass a bill that will ensure the nation's passenger rail system delivers maximum benefit to its customers.

Our nation's maritime industry plays an important role in daily commerce. In fact, our seaports handle 2.5 billion tons of goods and materials

each year. If confirmed, I will work with industry and state officials to alleviate congestion at our nation's seaports.

Small urban and rural transportation needs -- air, rail and public transportation, as well as roads -- were always very important considerations to me when I served at the Arizona DOT, and if confirmed I would look forward to working with you to maximize the mobility options for all Americans regardless of where they live.

Mr. Chairman, I believe my experience, my understanding of state and local transportation needs, and my commitment to ensuring the continued excellence of the American transportation system will enable me to provide effective leadership for the U.S. Department of Transportation. In these challenging times we need that leadership. If confirmed as the next secretary, I look forward to working with Congress, with President Bush and other members of the Cabinet as well as our public and private sector partners to ensure our nation and the American people are provided a safe, secure, efficient and effective transportation system both now and into the future.

Mr. Chairman and members of the committee, I sincerely appreciate the opportunity that you have given me here today, and I will respond to questions as the time is appropriate. Thank you, sir.

SEN. STEVENS: Thank you very much, Ms. Peters.

I think we'll have a round of questions. I said we'll limit them to five minutes the first time around. I expect almost every member will come, but we'll see how much time we will take.

Let me start off by saying, as the junior member of this committee I remember when we eliminated the Civil Aeronautics Board. One of the mechanisms we put in place to assure the small, isolated areas would continue to get air service where needed was the Central Air Service Program. There've been a lot of comments about it, and undoubtedly it needs to be reviewed and reformed, but have you had a chance to examine that program? Do you know that program?

MS. PETERS: Senator, Mr. Chairman, yes, I do know of the program and I know of its importance. It was certainly an important program in the state of Arizona as well, and if confirmed I would look forward to working with you to continue that program.

SEN. STEVENS: Thank you very much. We're also looking at two concepts: one is the next generation air transport system and the other is the next generation -- is a joint planning and development office for that system. Are you familiar with that, that's going on down there now? Secretary Mineta headed that up. Are you familiar with the background of what we've done so far on that approach, that new system?

MS. PETERS: Mr. Chairman, yes. I have had the opportunity to be briefed by Administrator -- Administrator Blakey as well as others in the agency, and would look forward to helping provide leadership for that system. The coordination with other agencies, like DHS, the Department of the Defense as well as NASA would be very important in that consideration.

SEN. STEVENS: I appreciate that. We've got an enormous problem with these new small jets, small business jets -- I like to call that the mosquito fleet -- that's going to enter the system, and they're going to be very

efficient aircraft, I'm told. They'll have about 35 percent of the -- they'll consume about 35 percent of the fuel that the existing planes the size of those, nine to 12 passengers, and they will have about 40 percent of the weight of the current planes. But they're going to enter the system and primarily be used by private -- you know, I'd say the executive type of aircraft. Have you looked at that problem and made any -- reached any conclusion how to handle that new -- enormous number of planes that are going to enter the system?

MS. PETERS: Mr. Chairman, I am aware of the issue and aware of the incidence -- higher incidence of these planes in the aviation fleet. I have not yet reached any conclusions as to the impact of those planes coming into the fleet, but if confirmed would look forward to learning more about that issue and working with you on that.

SEN. STEVENS: Thank you very much.

Our co-chairman is here now. Senator, I did not make an opening statement, we just went right into the nominee's statement, and I'd call on you for any questions or comments you might have.

SEN. DANIEL K. INOUYE (D-HI): I'd just like to congratulate the nominee.

MS. PETERS: Thank you, sir.

SEN. INOUYE: I had the great honor and privilege of meeting her yesterday, and I'm supporting her.

MS. PETERS: Thank you, sir.

SEN. STEVENS: Thank you very much.

SEN. INOUYE: (Off mike.) SEN. STEVENS: Let me go by the early bird rule here. The staff tells me the next person who entered the room was Senator Lott.

SEN. TRENT LOTT (R-MS): Thank you, Mr. Chairman, and thank you for having an expeditious hearing on this nominee.

And congratulations, Ms. Peters, on being selected for nomination by the president to this very important position, secretary of Transportation.

MS. PETERS: Thank you.

SEN. LOTT: Mr. Chairman, I've had occasion in the past to work with the nominee when she was at the Federal Highway Administration, and I found it to be a very satisfactory relationship. And we actually produced a result and it led to a completion of a project that had been in the mill for 40 years. And so I know she can help make things happen.

I don't want to ask a lot of questions now, because a lot of the questions I would ask you would be in areas that you maybe have not been as involved in in the past. But let me just say that, first, as I told the nominee when I met with her, I think transportation is a critical part of our society and our economy. I think it's the best department in the government in terms of actually creating jobs and doing things for people. Of course, the Defense Department obviously does a whole lot in that area but I just believe that we

need to have an agenda, a plan, and we need to be forward leaning when it comes to transportation and how we build our roads and bridges and doing more in the aviation area. We've got so much we've got to do there. Next year we've got the reauthorization of the FAA coming up. We've got an air traffic control system that is just not up to the standards that we're just going to have to have.

We have improvements in railroads, short lines and the big freight lines, but we need even more. We need more capacity and we need it soon. And Amtrak, we've got to decide do we want a national rail passenger system or not? Do we want some real reform or not? Do we want it to be able to provide good service, on-time service, you know, with input from the states and the passengers or not? We need leadership.

Now, I can just say that in Congress we're going to provide initiatives in all of these areas. As a member of the Finance Committee, we got a tax incentive proposal to greatly encourage the freight railroads to expand their capacity. We're going to keep pushing on Amtrak till we get it reformed. And so on down the list.

So I would hope that as our new secretary of Transportation, you know, I challenge you to get hold of this issue and get us moving forward. And I think you're going to have to speak to the White House and OMB a little bit, because they're not going to want to spend some of the money. But there's never a better dollar spent, other than defense, than the money we spend on lanes, planes, trains, ports and harbors. So, I hope that you will, you know, provide real leadership in this area.

Just a couple of specific questions with regard to your appointment to the Surface Transportation Commission. Can you give us an update on how that commission is going? I thought that was a good idea and could give us some direction, but one of the things we need is an on-time report from that commission. But what do you know about that as a member of the committee?

MS. PETERS: Yes, Senator, I can answer that question. Senator, as a member of the commission, we met, I believe, four times before my nomination was moved forward and I have stepped out of that role for the duration of this nomination process. But Senator, the commission is looking at developing a work plan that will address all of the issues that were included in the legislation authorizing the commission. There has been much discussion among the commission members, and I for one have strongly stressed the need to complete that report and submit it to Congress timely so that it can inform the next surface transportation authorization.

I'm not sure that all of the other members of the commission shared that view, but if confirmed, sir, I would have the honor of chairing that commission and would certainly look forward to driving home the need to get that report completed, accurately, completely, and to you on time.

SEN. LOTT: Well, I hope that you will push that and get it to us.

One of the other areas that I have developed some concern, and it involves a conversion on my own part, is my concern about safety in all these areas: in trains, in planes and also in the highways, and we had significant portion of the highway bill that had safety proposals in it.

We actually changed our approach to states on seat belts, for instance, and instead of trying to punish them or threaten them or beat them into submission, we gave them incentives, said if you pass a comprehensive seat belt law, you know, you'll get a little extra money. And my state, which is always recalcitrant on being told by the federal government what we have to do, within six months did it, and we've seen already an improvement in our statistics with regard to seat belt use by people involved in accidents.

We also have asked your department, the appropriate department, to look at some other safety proposals to see how it might work with regard to -- Senator Conrad Burns here is really concerned about child safety and some of the rear view activities and how kids accidentally can knock cars out of park and have them roll forward and kills children.

So I hope that you will also take a look at some of these safety initiatives that are being considered. I don't advocate doing them just for appearance sake, but if we can do some things that would help in that area, I think it would be a very good thing for you to focus on.

MS. PETERS: Senator, you have my commitment to do so. I think the greatest tragedy is for a child to lose their life in an automobile crash because they were not properly buckled in or in a child restraint seat.

SEN. LOTT: Thank you, Mr. Chairman.

SEN. STEVENS: Senator Dorgan is next.

SEN. BYRON DORGAN (D-ND): Mr. Chairman, thank you very much. I intend to support the nomination.

Let me congratulate Mary Peters. I think she has very substantial experience directly in these areas, so I think this is a good nomination.

I would also join my colleague Senator McCain in suggesting that it would make sense for us to move quickly on this nomination. I think having vacancies in these top positions in agencies is a hindrance, and I would hope we would move quickly on it.

I want to mention just several things: first, essential air service. We have in western North Dakota and eastern Montana, particularly in the Williston area, an essential air service contract connecting Williston, Dickenson to Denver. And that contract, they attempted to have a third flight a day when it was reauthorized a few years ago. Since that time a substantial activity in the oil patch in our region has increased rider-ship over 36 percent in one city and 12 percent in another. I want to work with you and visit with you about that because we need to connect that increasing activity in the oil patch to the hub in Denver with better EAS service.

I also want to mention on Amtrak, if I can, the Empire Builder, which runs from -- it affects a number of us on this committee -- it runs from Chicago to Seattle. The previous secretary, Norm Mineta, who you succeeded, once said, quote -- he said "trains that nobody wants to ride." He was talking about long distance trains and used the Empire Builder as an example, "trains that nobody wants to ride."

I sure hope you'll dig into this Amtrak issue, as Senator Lott indicated. Senator Burns knows how important Amtrak is across Montana, I know

how important it is across our state, and it is full, unbelievably popular. It's a terrific service. And obviously, Secretary Mineta didn't know what he was talking about, hadn't done his research. But I think all of us look forward to working with you on Amtrak. Zeroing out Amtrak funding or coming in with a proposal that would essentially eliminate all long-distance trains is not the way I think the majority on this committee believes we should approach this. So I look forward to working with you on that.

And then Senator Inouye has been very active, and I have joined him on this issue of rulemaking with respect to foreign control of U.S. airlines. That is very controversial, as you know. Senator Inouye has proposed an amendment to interrupt that. I've supported that amendment. I hope we can have discussions about that issue because I think that is -- that's very important.

So those are a few of the issues. I talked to you about a radar issue in our state as well as the Bismarck Commerce Center. But having said all of that, I -- you know, Mr. Chairman, we have a lot of nominees that come the Congress who are marginally qualified -- I shouldn't say a lot, but a number of times someone's friend is nominated. You have a depth of experience, I think, in transportation issues that's very, very important.

I do want to mention one additional thing, and that is the issue of surface transportation, the STB with respect to railroads. Again, my colleagues Senator Rockefeller, Senator Burns and myself have worked long and hard on the issue of captive shippers. And to say that the STB does nothing is to give them must greater credit than they deserve. It's an unbelievably inept agency that -- I mean, glaciers move more rapidly than the STB on very serious issues that they are confronted with.

So those of us on this committee, on a bipartisan basis, who push and try to cajole and force the actions on some of the important things for captive shippers, who are really literally held captive and are paying a massive amount of extra money. Our public service commission estimates that North Dakotans are overcharged by $100 million, $100 million a year. You know, we'd just like an agency to stand up for the interest of consumers, and that has not been the case for a long, long time. And again, on a bipartisan basis members of this committee would very much like some action. That falls under your jurisdiction at some point here, and we hope to be able to visit and work with you on all of these things.

I've not asked you a question because we didn't have opening statements. I know the chairman said we could either ask questions or make a statement. I wanted to at least alert you to those issues of interest from the standpoint of one rural state, North Dakota, and I look forward to working with you. And I will look forward to seeing that -- if we can get this nomination to the Senate as expeditiously as possible.

MS. PETERS: Thank you, Senator Dorgan.

SEN. DORGAN: Thank you.

SEN. STEVENS: For the interest of the members, Senator Inouye has just consented that we will have a vote on -- after the next vote on the floor, we will convene in the President's Room to see if we can get an agreement to report out the nomination -- the name -- for consideration by the Senate.

Senator Rockefeller?

SEN. JOHN ROCKEFELLER (D-WV): Thank you, Mr. Chairman.

I would say, Ms. Peters, that if we're going to have a vote on you after our next vote, that your situation doesn't sound exactly dire to me. (Laughter)

MS. PETERS: (Laughs.)

SEN. ROCKEFELLER: And I think for very, very good reason. You came to see me; we had a very good talk and discussed a number of issues. But the thing that struck me most about you is your openness, the sense of transparency about you, and that you kind of look for the right solutions and you're willing to stand by them, and you're plain spoken in the way you do it. So, I just -- I want to praise you, and the president in the selection of you, because I think you're going to be terrific. And I agree with what Senator Dorgan said about the transportation background, that support.

I'll just raise a little higher than he did the issue of captive shipping. That drives most of our colleagues on this committee crazy, but it ought to drive all of them, I think, in the direction of trying to solve this. It's a very simple thing. Staggers -- who was a West Virginian -- that Staggers Deregulation Act of '84, everybody got deregulated if there were two lines going into the business, but the 20 percent who weren't, didn't get deregulated. And that's when he was referring to the STB, the ICC before that. There's never been any movement on that.

And then there's the question of revenue inadequacy, and the railroads -- always have inadequate revenues. And then as you're discussing that, you open up their annual reports and the revenues are overflowing in all directions.

And this is serious, because -- I don't know what the West Virginia figures are. His are 100 million, that means probably ours are more because there's so much chemicals and coal and timber that comes out of our state, car parts, all kinds of things. And I think it's just a question of a Cabinet officer sort of grappling with that issue. And we've -- I've been at it for 22 years, made absolutely no progress whatsoever, and so have others. It affects every one of us individually, as virtually equally. Kay Bailey Hutchison (isn't ?) here today, but, you know, Houston was just in a mess, or parts of Texas were in a mess when a situation happened down there.

And it's got to be solved. And I think your transparency creates an atmosphere for doing that. I mean, maybe there's a special meeting that you call. I met with the head of one of the big railroads this morning and he seems very open, accommodating, in his attitude. Maybe things are changing. It isn't good enough to sort of take an individual industry which is having a problem and then make an accommodation to them, because that slides past the real problem. But that's a hard one.

I would also mention the safety of motorists and pedestrians who -- at rural rail closings (sic). That's a huge thing in West Virginia. And it's a -- it's not just you, it's the DHS, Coast Guard, TSA, the Corps of Engineers, all kinds of other folks, local also, and the behavior of people. But it is an enormous problem. And I won't ask for an answer right now, but I would actually appreciate if you would maybe send me a letter giving me some of your thoughts on what we do about that, because the cost involved and the safety involved, like you mentioned the child with the seat belt, well, this is Americans with a

seat belt for a period of a number of yards, and a lot of people die as a result of this.

Another issue that I would just bring up is the -- something that we face very much in West Virginia, where we have -- only 4 percent of West Virginia's flat; everything else is either going up or down.

MS. PETERS: Mm-hmm.

SEN. ROCKEFELLER: And so that means that when you have as much chemicals as we do, up and down the Ohio and then into the interior and the Canaugh River -- it's really the foundation state for chemicals. And so it's the question of what do you do when there's an incident, whether it's a terrorist attack or whether it's just a car that overturns, and the way of systematically handling those problems is something that is in your realm.

And I would conclude with 12 seconds. I am ranking on the Aviation Subcommittee here, and we've seen -- the aviation industry has been turned upside down, as you very well know, and its budget, the FAA's budget for dealing with these things -- Congress has consistently rejected cuts to airport construction funding. We ought to be redoing O'Hare Airport. I was there two days ago. It's wildly inefficient for today, very, very expensive. But the budget that gets submitted for FAA construction is extremely important. You will have a voice in that. And I want you to be sensitive to -- you know, we've had all kinds of things that have been taken from our budget, but some of these things affect Americans every single day.

And with that, I'd just say that -- if you would think about those, respond to me on the rail crossing thing, and to say that I'm going to very proudly vote for you, and evidently very soon. (Laughter.)

MS. PETERS: Thank you, sir. Thank you, sir.

SEN. ROCKEFELLER: Thank you, Mr. Chairman. SEN. STEVENS: Thank you, Senator.

The next senator is Senator Burns.

SEN. CONRAD BURNS (R-MT): Thank you, Mr. Chairman.

Ms. Peters, thank you very much and congratulation on your nomination, and we're glad you're willing to serve. MS. PETERS: Thank you.

SEN. BURNS: Senator Rockefeller was talking about aviation and the area of aviation. I think our challenges there are a great deal more than they were before 9/11. All the passengers are back in the air prior -- that we had prior to 9/11, but the problem is it's taking more airplanes to carry them. We've got regional jets now, not bigger than -- not as big as (airports ?) but making more frequent flights. I think that has to be put in the mix. And general aviation -- how general aviation is treated -- it will play, I think, an even larger role in the years to come. And if decisions are made in the Department of Transportation and the FAA or wherever, we got to make sure that the big and the small are considered and to be at the table.

And as we've talked about in surface transportation, I think we're going to be facing great challenges in the terms of capacity constraints in our network. The next 20 years, freight shipments are expected to dramatically

increase, placing serious demands on roads, aviation, rail and waterways. My particular concern, as you know, relates to the role of what freight rates, or the freight railway, play in our nation's infrastructure.

I think we have a problem in the rail industry that cannot be ignored any longer. There are capacity constraints, I understand that, but most of those limitations are a symptom of a much larger problem, the lack of meaningful competition for rates and service in many parts of our country, especially in Montana, and I think Senator Dorgan alluded to that for North Dakota a little while ago.

We got to remember the other day the Surface Transportation Board issued some rules on trying to deal with small shippers, that they may have a place to obtain, but it's anything under $200,000. That rule is not -- I don't think has a lot of merit to it. And we will probably address that some way or other here in this committee. One has to remember that it is in the law now in Section 101.01 in Title 49 of the U.S. Code. It's the policy of the United States government to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail. But there's also another line to that: and to maintain reasonable rates in the absence of effective competition. We have to address that, because it's being reflected not only in our grain that we ship from the states of Montana to our ports, but the energy, the coal we ship from ours that goes into electricity, and of course rate payers pay that. And we've seen a big increase there. And we have to deal now -- we have to deal with it in the context of what's good for the railroad too, because we cannot operate without good rail service. We have to have them, but we're down to four. And so we have to find some way, some way that the small and the large can survive along with our railroads, even our short lines and how we handle that.

And there's certain things that we can do, and we should do, in the near future in order to address those problems and still take care of the infrastructure that they need to improve their capacity to move freight by surface transportation.

Amtrak, I will tell you, I want you to move some folks to the Department of Transportation.

MS. PETERS: You mentioned that, sir.

SEN. BURNS: I mentioned that to you, and I think it -- because they have to be in the overall mix of our transportation plan in this country. And everybody says there's nobody rides those trains across the Empire Builder. Try and get on it, because it's a pretty busy train from Minneapolis to Seattle.

So those are the areas that I think I look forward to working with you in all of these challenges. I have no questions now. Thank you for coming to the office and visiting with us.

Mr. Chairman, and thank you very much for holding this hearing and let's get this person in the seat that she deserves.

MS. PETERS: Thank you, Senator.

SEN. STEVENS: (Off mike.) It may be that absent senators might have a question that would have to be answered, so we will delay the vote up -- the

vote on your nomination, but we will meet off of the floor at -- on the next vote after the questions have been answered.

MS. PETERS: Thank you.

SEN. STEVENS: They will be presented to you in writing by tomorrow at 10:00.

MS. PETERS: Thank you.

SEN. STEVENS: Senator DeMint?

SEN. JIM DEMINT (R-SC): Thank you, Mr. Chairman. And I want to express to you my full support of the nomination of Ms. Peters. I appreciate her courtesy in coming by my office. She's actually been to South Carolina to work on some innovative transportation solutions and I think she is open to consider innovative ideas. I think we all know that the federal Department of Transportation can do only so much, and I think it was the thought of considering taking some of the road responsibilities back to local and state governments while we look at national infrastructure for rail, and what we're going to do with aviation may make sense at this time. And she seems willing to look at some innovative ideas. So I appreciate her very much and look forward to supporting her nomination.

MS. PETERS: Thank you, Senator.

SEN. STEVENS: Thank you, Senator.

Senator Smith?

SEN. GORDON SMITH (R-OR): Yes. Thank you, Mr. Chairman.

And Mary Peters, I congratulate you on your nomination, and I join my colleagues on both sides of the aisle in looking forward toward voting affirmatively for your confirmation. As we spoke in my office about a range of issues from planes, trains and automobiles, you got a huge job. I know you're up to it, both personally and experientially and professionally. You're a wonderful selection.

Obviously, as there are reports now coming out, that the Highway Trust Fund will be out of money by -- or running short of money by 2008, and yet Americans love to travel, and they particularly love their cars. We spoke of the I-5 Columbia River Corridor that connects the states of Washington and Oregon. And congestion is such there now that by 2:00 in the afternoon it's a parking lot, and yet it is a vital link for commerce in our country, and transportation.

So obviously, I'm anxious to work with you and to learn of any ideas you have to help us to alleviate the congestion on our highways and how we're going to finance it.

MS. PETERS: I look forward to that, sir.

SEN. SMITH: I think I would want to throw in my comments as well as to the railroads. Obviously, part of alleviating our roads is investing in our rails, and the federal government has had a minimal role in investing in rails, and yet on the Finance Committee recently, we put in a tax credit for them to

invest in rails and we find, in the operation of that tax credit, that much of it was nullified by the AMT, and the IRS is now coming out with a ruling further restricting it and therefore frustrating, I believe, the very unanimous or near -- or overwhelming intent of Congress. And so anything that you can do on -- to help us with ideas for how we get investment in rails, both cross-country and short line, I think is critical to relieve congestion and to increase efficiency in transportation.

I would also throw in my support for essential air service. Oregon has many rural places, it's actually a big state geographically, and rural airports should not be forgotten. And so anything that you can do for them and focus on their needs, I appreciate it. And I look forward to working with you on these issues.

MS. PETERS: Thank you, Senator.

SEN. SMITH: Thank you, Mr. Chairman.

SEN. STEVENS: Thank you, Senator.

Senator Lautenberg?

SEN. FRANK LAUTENBERG (D-NJ): Thank you, Mr. Chairman.

Ms. Peters, it looks like you have made a lot of friends in your private discussions. And I sort of feel the same way, but we got a couple questions to ask.

MS. PETERS: Absolutely.

SEN. LAUTENBERG: The fact of the matter is that while we can't do much about the destruction that we get from unusual weather, other conditions beyond our control, but we can do things about transportation, and I'd like to know that you're going to tackle the full role that transportation provides in our society.

And let me start -- Mr. Chairman, you will have opening statements in the record, I assume? Yes, he said. (Laughter.) One of the -- (chuckles) -- Mr. Chairman, you didn't object, right? Okay. (Laughter.)

You certainly have experience on the highway side of things. The future transportation needs of our country will not be met by highways alone, and I've met with people who were on the freight rail side of things, and you know I'm very close to Amtrak and listen with interest as other senators, from other parts of the country besides the Northeast, have a serious interest in seeing that Amtrak continues and the investments, appropriate investments made to bring it up to date.

This year we're going to celebrate the 35th anniversary of Amtrak becoming a public corporation, we call it, and -- but the budgets tell us the true story; that in a single year we spend more on highways then we've spent on Amtrak improvement in 35 years. And we just can't continue like that. It was noted that the skies are going to be fuller with the advent of the light jets. Right now we're trying to find room for all the flights that we have, tighter separations, et cetera.

We also note that there are shortages of controllers. At Newark, for instance, where we have over 1,000 controllers, we're about 100 short, and so we have to continue to see that that population is built relative to the need.

Ms. Peters, do you see a role for rail service as part of a security measure dealing with emergencies like 9/11 or the Hurricane Katrina? Do you see rail as an essential part of that structure that helps us deal with these emergencies?

MS. PETERS: Well, Senator, I also agree that we need a national passenger rail system. And I certainly, to your specific question, see a role for passenger trains in terms of evacuating areas. In fact, part of the emergency response that is in place in the post-Katrina situation for the Gulf Coast area is to use Amtrak to help evacuate people from that area should another hurricane -- hurricane come into the area.

SEN. LAUTENBERG: We have a -- I have a letter that you sent to Senator Kyl, goes back a few years, about the safety concerns with heavier, larger, longer trucks, rollovers and jack-knifings by trucks, already -- this was, again, seven years ago -- already a problem on our interstates and our highways. In addition to safety consequences, we're reminded about the effect of additional weights on our highway facilities, especially bridges. Do you still maintain that view, that concern?

MS. PETERS: Senator, I do. I think safety has to be a predominant consideration, and certainly the wear and tear on our roads. If confirmed, I would look forward to discussing that issue with you. There are circumstances where we could perhaps define situations where longer and heavier trucks could be safe, but I share your concern about making sure that safety is always first in this issue.

SEN. LAUTENBERG: The principal thing for us is to make sure that we have this balanced highway system, and so we've discussed shortages of FAA controllers, the search for more capacity in the -- on the freight rail lines, the congestion and pollution that we now get from jammed highways. And so we have little choice. And Senator Lott and I have a bill, that's sponsored by many of our friends here, to get Amtrak a schedule of funding that permits it to operate without having to go out there with a tin cup every time they need something.

So I'm hoping, Madame -- Ms. Peters, that you will join us in that quest to make sure that Amtrak gets the investment that it needs to bring us up to date.

MS. PETERS: Senator, I look forward to working with you and -- SEN. LAUTENBERG: Thanks.

Mr. Chairman, are we going to have another five-minute round?

SEN. STEVENS: Yes.

SEN. LAUTENBERG: Thank you.

SEN. STEVENS: (Off mike.) Senator Pryor?

SEN. MARK PRYOR (D-AR): Thank you, Mr. Chairman.

Ms. Peters, thank you for being here before the committee today. Let me ask a couple of questions about trucking security. Last week the Senate passed the port security bill and it had some trucking security provisions in there to clarify authority and responsibility when it comes to fraudulent CDLs, state and local law enforcement, those type issues. I've noticed in some of my reading that the FMCSA is considering a pilot program to allow some long-haul, Mexico-domiciled motor carriers to operate throughout the United States. Do you know anything about that?

MS. PETERS: Sir, I have also heard that, Senator, and I have asked the question, and there are no immediate plans to do so.

SEN. PRYOR: Okay. If there are plans, I'd be curious about what statutory authority there is to do that. Do you know what statute might give the agency that authority?

MS. PETERS: Sir, I do not. And I understand your concern about the issue and, if confirmed, would look forward to getting to the bottom of the so-called rumors in addressing the issue.

SEN. PRYOR: I'd say this, that -- and I look forward to working with you on this, but I would say this -- that if DOT is planning on moving forward, the kinds of things I would want to know is what legal authority is there, and then I would want to know, is there some sort of agreement with Mexico to allow U.S. safety inspectors and auditors to look at the trucks? Do they have to meet the same requirements that U.S. domiciled carriers have to meet?

Will they have to pay all the same fees, the various registration, fuel taxes, those kind of things? Will they have to do the International Registration Plan, the IRP, and the Internal Fuel Tax Agreement? Would they have to comply with all the same rules and regs that the U.S. carriers would have to? So, as you look at that, I would very much appreciate having a dialogue with your department and those agencies as that is being developed.

And the other thing I wanted to touch on, something you and I talked about several days ago, is the real infrastructure needs that we have in this country. I mean, we just talked about trucking; obviously, our highways are overcrowded. We all know that in the trucking industry there is a driver shortage right now. But you look at our railway system, it's about at capacity in many places; air traffic control systems are outdated; we've not done a great job of upgrading and maintaining our lock and dams on our rivers. You know we can go through a long list of our needs.

And a part of your responsibility is to try to address all of those things. I know that you've given a lot of thought, but let me just ask my question, then I'll let you answer.

In some of my reading, I read where you said that we can't depend on the federal government to bring the money in that it was around -- that was around when the interstate system was first built. And I guess my question is, what does that mean? When you say we can't depend on the federal government to have that same kind of money when the interstate system was first built, what does that mean? That sounds like toll roads to me, but I'm curious to hear your response on how you think the federal government will -- or we as a nation will pay for these transportation needs that we have.

MS. PETERS: Sir, the basis of the remark was the fact that the gas tax system which was put in place to finance the interstate system is likely not going to be viable to help meet all of our nation's transportation system needs in the future, because of the greater instance of hybrid or alternatively fueled vehicles coming into the fleet, which is a very good thing in terms of air quality and other issues. So the basis of my remark was that we have to look beyond those traditional methods of funding infrastructure to look for new and innovative ways to bring a diversified set of funds to bear to meet our nation's transportation needs.

SEN. PRYOR: Would that include toll roads?

MS. PETERS: It could very well, sir, yes.

SEN. PRYOR: Would that include toll roads on existing highways or just on new construction?

MS. PETERS: Sir, I believe that the intent right now is only on new construction or improved construction; but those are decisions, as was mentioned by one of your colleagues, that I think are better made, in most cases, by state and local governments. However, the federal government certainly has an interest, especially in our interstate system, in ensuring that that system continues to serve all Americans, and importantly, serve commerce needs throughout the United States. So it is an issue that I would look forward, if confirmed sir, to discussing more with you and learning more about your position on the issue.

SEN. PRYOR: Thank you. Thank you, Mr. Chairman.

SEN. STEVENS: Senator Snowe?

SEN. OLYMPIA SNOWE (R-ME): Thank you, Mr. Chairman.

And I welcome you, Administrator Peters. And you certainly come with, you know, the highest level of commendation with respect to your past accomplishments and experience, so I'm very pleased that you'll become the next secretary of Transportation, because of your breadth of expertise in the areas that will be so critical to the future.

I know some of my other colleagues on the committee have already referenced it, and I'm very pleased as well that we had the opportunity to meet recently on some of the issues that I consider to be critical, certainly to my state of Maine, as well also to, I think, the national transportation policy. But obviously as we move to the future, one of the concerns that I have expressed is making sure that rural states like Maine are not forgotten in the overall transportation policy.

First of all, as I mentioned to you about Amtrak -- and we were fortunate to be one of the last states to have the benefit of an extension of Amtrak from Boston to Portland, and it's extremely successful, has a 92 percent support rate because of the outstanding services provided to the people of Maine and the vicinity. It works exceedingly well, so much so that we're looking to extend it even further up into the state. It's heavily utilized; it's one of the most successful routes, second-highest revenue routes in the country. So, I think that there's no question this bodes well for the future.

And one of the reasons for its success, as I mentioned to you, was the federal waiver that was granted to the state to use congestion mitigation and air quality funds for that purpose. And that will expire in 2009.

Can you say to this committee what your views are with respect to the use -- the flexibility of using federal transportation funds for this purpose? Because that certainly has contributed to success for the down-eastern extension, Amtrak to Maine, and certainly will in the future, and if -- particularly if we want to extend that service even further up, because it's so heavily utilized by the people in New England, in my state.

MS. PETERS: Senator, as a former state transportation administrator, I very much encourage the use of local discretion to use funding that is allocated to states, such as Maine has done to help support the Amtrak operation. In fact in terms of having a viable national transportation, rail transportation system, I think having that kind of flexibility and state participation and involvement will be essential in the future. SEN. SNOWE: I appreciate that because I think that it is -- I think it is going to be critical. And I happen to believe, and I gather you share that belief as well, that it is essential that the federal government play a role in creating a strong national rail system. It is absolutely essential that we have one, and one that, obviously, that's going to provide -- that's going to have the benefit of federal support. You know, hopefully we can move, you know, further and further away from, you know, huge federal subsidies. I mean, that's obviously what we have strived -- striven for in this committee over the years. But nevertheless, I think it's so vital and central to our overall transportation policy.

Secondly, on aviation, rural aviation. And again, I know my colleagues have raised this issue but I do think it is paramount. And that is, of course, regional airports such as those that exist in Maine are essentially air service communities that depend upon the essential air service, you know, funding. And one, of course, is the fact that -- first referring to the operational evaluation plan, it seems that much of the focus in the past by these plans -- and certainly the most recent, I think, was I was in 2005 -- focus on the large hub airports, understandably so because of the congestion that exists at these hub airports.

But on the other hand what concerns me is what is occurring in, you know, my state with the small regional airports, is that we're, you know, losing lots of seats, and -- overall both in terms of flights and seats in passenger service. And, you know, there's no question that our airports have been very hard hit over the years, and yet it's pivotal and central to economic development.

So I would like to get your views, one, in terms of examining, you know, how you incorporate, you know, regional airports, and those that serve the rural states of this country, in your overall plans for the future.

MS. PETERS: Senator Snowe, I do think it's essential to have air service into our rural areas. It's been over 25 years since deregulation of the aviation industry, and we need, I think, to look again at how the service is working and look at the situations that you describe and determine where it's most appropriate to provide assistance to those airports. Having come from a state also with a large amount of rural area, I do appreciate how important those regional airports are and think they have to be part of the complement of transportation services in the future.

SEN. SNOWE: You know, I appreciate that and I hope you will give that consideration and since they play a premier role in the development of our economies, as does the essential air service program. That, you know, Maine is one of the -- other than four other states, we're the largest beneficiaries of that program. It's absolutely vital to ensure that those airports receive that service. I'm also concerned about the administration's proposed community cost sharing between the federal government, 80/20. It's something that we have rejected in the past and certainly, hopefully, will do so in the future because I think that places an inordinate burden on those communities that depend on the EAS program. But it's obvious that it's going to have a paramount impact on them if they have to provide for the cost sharing and they see a reduction in the overall program which the administration has submitted, you know, a program and a budget for that for less than, I think, a third of what exists today..

MS. PETERS: Senator, I absolutely understand your concerns in that area and would be happy to get more information, should I be confirmed, and follow up with you personally on that.

SEN. SNOWE: I appreciate that. Thank you.

Thank you, Mr. Chairman.

SEN. STEVENS: Thank you.

Ms. Peters, I'm told that while you were reading your opening statement, we finally received clearance now for this committee to seek unanimous consent to pass the National Transportation Safety Board Reauthorization Bill. Aviation safety is one of our major concerns. In Alaska I was alarmed when I found that one out of 11 pilots were being killed in aircraft accidents. We have the highest number of pilots per capita in the country. We developed what we call the Five Star Medallion Program, with the help of the Department of Commerce and FAA, and we have reduced significantly the deaths and increased safety in our state.

I want to know -- I do get provincial here -- I want to know if you wanted to come up and take a look at that program and study it to see if it couldn't be replicated throughout the United States, particularly the rural areas, the rest of the rural areas of the United States.

MS. PETERS: Mr. Chairman, it sounds like an exemplary program and one I would be very pleased to come to Alaska to review.

SEN. STEVENS: I look forward to showing you a little bit of my (marine ?) research capabilities, too. (Laughter.)

MS. PETERS: I look forward to that, sir.

SEN. STEVENS: We do -- I want to get back to the whole problem of financing. As other senators have said, FAA will be reauthorized next year. And we've had hearings now on aviation investment needs and I think we're going to have to have a major session with the aviation communities in order to try and develop a plan. We really need a financing option that really folds in both the increased needs in terms of investment and the transformation to the next-generation air transport system. I do hope that that is something that you

will help us on. As a matter of fact, we have one of your people here on this committee as a fellow for a year to help find ways that we can work together on that issue.

I've not talked about highway issues. We all know your background on highways. And so all I can say is, is that we have an increasing number of fatalities on our highways. I think if it doesn't stop, we can't reverse that any other way, we're going to restore the speed limits on interstate highways. We have to find some way to reduce those deaths. And they -- each year they're going up. I would hope that we would have a chance also to work with you on that, particularly with regard to the fatalities on our state highways.

MS. PETERS: Mr. Chairman, you have my commitment to do so. There is no higher priority at DOT then reducing the amount of deaths and injuries that occur on our nation's highways every year.

SEN. STEVENS: Yes. And I was appalled at some of the statistics I saw today as we prepared for this hearing, and that is an alarming -- alarming rate of increase.

Let me now turn to the next senator that's here, would be Senator Lautenberg.

SEN. LAUTENBERG: Thanks, Mr. Chairman.

Ms. Peters, you struck a note of alarm with me, which passed because I ran out of time, but I'd just say that you were looking at the opportunity for areas where truck size and weight standards can be changed so long that it's done safely.

Now, if I look at your letter that I mentioned before, when you were with the Arizona Department of Transportation, you talked about the damage that results from heavier weights in the trucks, and here you're telling us that we're laggard by billions and billions of dollars in repairing bridges, we have lots of functionally obsolete bridges across the country, and I hear you say you're looking for opportunities to increase the weights -- the size of the weights.

Isn't that a kind of a reversal of position? And if so, please let me know because that's not something that I would take to as a positive indication of where you want to go.

MS. PETERS: Senator, please forgive me if I mis-communicated on that. What I was referring to are that some states are considering proposals for truck-only lanes, lanes where trucks might be segregated from the rest of the traffic, deeper pavement beds, deeper -- deeper pavements that would withstand the weights of truck. If the traffic, it could be segregated such as that in the way proposals in some states are considering, that is what I was referring to. I was not referring to lifting the LCD freeze or the truck size and weight. And what -- the position that I took in that letter back seven years ago to Senator Kyl remains my position.

SEN. LAUTENBERG: Okay. I just wanted to be sure that we're on the same truck lane, as they say.

In the matter of foreign ownership of our airlines, ownership and control, that's a matter of great concern to me and to many of us. These are

important national assets and I'd be wary and resistant to the notion that we might turn over -- let control be taken by foreign owners. I think it's a bad idea for many reasons.

But do you intend, if you're confirmed, to pursue changes in the rules on foreign ownership of U.S. airlines?

MS. PETERS: Senator, I certainly have heard your concerns as well as those of many other members of this committee and of Congress as well, and do understand that there have been comments received by the department on a supplemental notice of proposed rulemaking as it relates to the control of airlines. I commit to you that I will carefully review all of those comments, and review them with you and talk with you before the department makes any decision on that issue.

SEN. LAUTENBERG: You're aware of the fact that there is a strong interest in our region to open up another rail tunnel under the Hudson River so that we can increase the capacity and the scheduling for the trains that go through there, and the expected increase in the number of cars that are going to be put on the rails, et cetera. And I'd like to know that you will at least consider seriously the requests for help from you to make sure that we get going with that, with that project. That's a project of national interest, even though it's -- the tunnel is between New York and New Jersey, because it takes care of all of the East Coast service. So can I have an indication of the fact that you're -- that you understand the need for this tunnel and will be helpful to us as we pursue a way to get it done?

MS. PETERS: Senator, certainly. I certainly appreciate the need for that tunnel and have had an opportunity to work with my former colleagues, Jack Lettiere as well as Joe Boardman, who are now in different positions but have impressed upon me the need for transportation solutions in that area.

SEN. LAUTENBERG: Now, I don't want to ask any questions that might be interpreted as being on the personal side, but you're a motorcycle rider, are you not?

MS. PETERS: Yes, sir, I am.

SEN. LAUTENBERG: Do you always wear a helmet?

MS. PETERS: I never ride without a helmet, sir. SEN. LAUTENBERG: I just wanted to be sure because everybody -- (laughter) --

MS. PETERS: (Laughs.)

SEN. LAUTENBERG: -- I would buy you one if you didn't have one. (Laughter.)

MS. PETERS: (Laughs.)

SEN. LAUTENBERG: -- because I had a ski accident a couple of years ago, and the helmet that I was wearing was two days old and I have been skiing 60 years, and it virtually saved my life. I had to go in for emergency surgery as a result of that. That was for foolishness, Mr. Chairman. (Laughter.)

Thank you very much, Ms. Peters. I look forward to working with you.

MS. PETERS: Thank you, Senator.

SEN. STEVENS: A bike rider, huh?

MS. PETERS: Yes, sir, an avid motorcyclist. In fact, I own two.

SEN. STEVENS: They've got another one down there at the White House, in Josh Bolten. Now we understand why you move so quickly. (Laughter.)

MS. PETERS: (Laughs.)

SEN. STEVENS: We thank you very much. As I said, we do have an understanding here. There are some absent senators. We have agreed that they will have until 10:00 tomorrow morning to file questions. As soon as those answers are received and they tell us that they have been, we will move to consider reporting your nomination to the floor in a meeting held in the President's Room off the floor. I cannot tell you exactly when that time will be; it depends on how long it takes you to answer those questions.

Thank you very much for your appearance today, and I think you've been very frank to all these people. Made some promises I'm not sure you can keep; that's all right.

MS. PETERS: (Laughs/laughter.)

SEN. : (I'll be ?) hanging over there, Mr. Chairman.

SEN. STEVENS: I understand. We do have a pretty bipartisan approach to many issues, particularly in transportation, here in this committee. So I look forward to working with you, along with our co- chairman and members of both sides of the aisle. You have a grand assignment, and it's a very difficult one. We wish you very well. Thanks.

MS. PETERS: Thank you so much, sir. Thank you.

END.

The New York Times

Editorial

Making the Highways Less Safe

Published: December 10, 2006

To describe the Bush administration's policy toward the trucking industry as deregulation is farcical. The word empowerment is so much more fitting for the array of trucking executives the White House appointed to be the ranking regulators of their own industry. While avowing professionalism, this cadre of political contributors and industry insiders has brazenly relaxed federal standards for truck safety over the last six years. Rather than tightening drivers' hours as safety specialists advised, the political powers at the truck safety agency have actually loosened them — increasing the maximum driving hours to 77 from 60 over seven days, and to 88 hours from 70 over eight consecutive days on the road.

The industry's deep-pocketed lobbyists made sure the Republican-controlled Congress remained as passive as any glassy-eyed driver involved in the annual toll of 5,000 truck-related fatalities. A detailed report in The Times by Stephen Labaton has laid bare the administration's shameful policy of industry pandering as the worst in a generation. Rather than fulfilling the standard set a decade ago to halve the death rate by now, the administration has let the industry continue as the nation's most treacherous. The accident fatality rate is nearly double that involving only cars.

The list of highway foxes embedded in the regulatory henhouse highlights the Bush era's anointment of big industry across the spectrum of public and worker safety, from mines to Interstates. The head of the government truck safety agency, Joseph Clapp, was a trucking executive who led a foundation that produced research ludicrously discounting driver fatigue as a factor in accidents. David Addington, a trucking industry force for loosened regulations, eventually became chief of staff to Vice President Dick Cheney — and a zealot for overweening executive power.

Reprimanded in court rulings for ignoring its own experts' findings about driver fatigue, the truck safety agency responded by reissuing the same faulty controls. These evade such obvious needs as stronger training and reliable electronic trip logs in place of "comic books," as grizzled long-haulers call their paper logs. Safety specialists point out there would be a national uproar if airline regulators dared to tolerate a fatality rate of 5,000 a year.

http://www.nytimes.com/2006/12/10/opinion/10sun2.html?_r=1&n=Top%2fOpinion%2fEditorials%20and%20Op%2dEd%2fEditorials&oref=slogin

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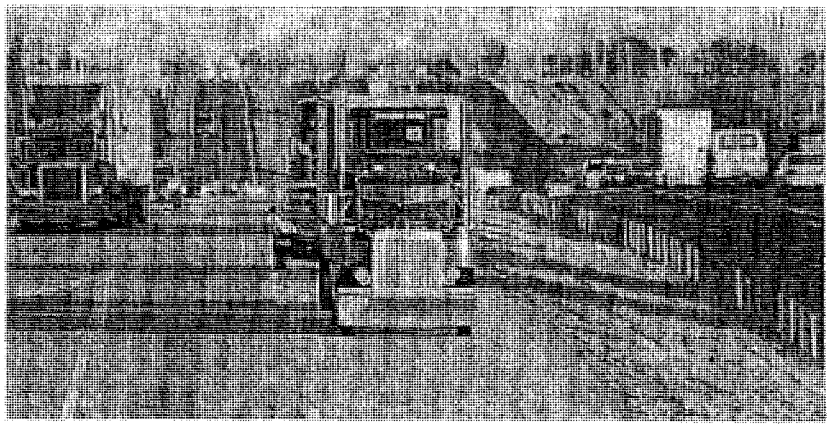
December 3, 2006

As Trucking Rules Are Eased, a Debate on Safety Intensifies

By STEPHEN LABATON

WASHINGTON, Dec. 2 — As Dorris Edwards slowed for traffic near Kingdom City, Mo., on her way home from a Thanksgiving trip in 2004, an 18-wheeler slammed into her Jeep Cherokee.

The truck crushed the sport-utility vehicle and shoved it down an embankment off Interstate 70. Ms. Edwards, 62, was killed.



Interstate 70 in Kingdom City, Mo., where Dorris Edwards, 62, was killed in 2004 when an 18-wheeler hit her Jeep Cherokee.

The truck driver accepted blame for the accident, and Ms. Edwards's family filed a lawsuit against the driver and the trucking company.

In the course of pursuing its case, the family broached a larger issue: whether the Bush administration's decision to reject tighter industry regulation and instead reduce what

officials viewed as cumbersome rules permitted a poorly trained trucker to stay behind the wheel, alone, instead of resting after a long day of driving.

After intense lobbying by the politically powerful trucking industry, regulators a year earlier had rejected proposals to tighten drivers' hours and instead did the opposite, relaxing the rules on how long truckers could be on the road. That allowed the driver who hit Ms. Edwards to work in the cab nearly 12 hours, 8 of them driving nonstop, which he later acknowledged had tired him.

Government officials had also turned down repeated requests from insurers and safety groups for more rigorous training for new drivers. The driver in the fatal accident was a rookie on his first cross-country trip; his instructor, a 22-year-old with just a year of trucking experience, had been sleeping in a berth behind the cab much of the way.

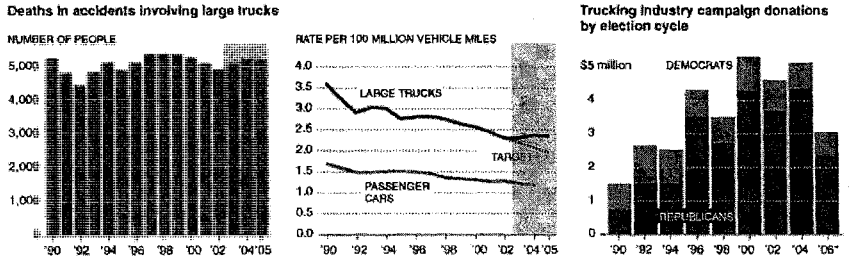
Federal officials, while declining to comment about the Edwards accident, have dismissed the assertion that deregulation has reduced safety and have maintained that in fact it has helped, though the Edwards family and many other victims of accidents have come to the opposite conclusion.

In loosening the standards, the Federal Motor Carrier Safety Administration was fulfilling President Bush's broader pledge to free industry of what it considered cumbersome rules.

Under Loosened Rules, Truck Fatalities Remain High

Since 2003, the Federal Motor Carrier Safety Administration has eased regulations involving the trucking industry, including increasing the maximum driving hours for truck drivers. Safety groups say that the looser standards have made it impossible to reduce truck-related deaths. About 4,932 large trucks were involved in fatal crashes in 2005.

The trucking industry has vigorously lobbied lawmakers for the deregulation measures and has directed large contributions to Republican lawmakers.



Sources: Federal Motor Carrier Safety Administration; National Highway Transportation Safety Administration; Center for Responsive Politics

*Based on Federal Election Commission releases as of Oct. 10.

The New York Times

In the last six years, the White House has embarked on the boldest strategy of deregulation in more than a generation. Largely unchecked by the Republican-led Congress, federal agencies, often led by former industry officials, have methodically reduced what they see as inefficient, outdated regulations and have delayed enforcement of others. The Bush administration says those efforts have produced huge savings for businesses and consumers.

Those actions, though, have provoked fierce debate about their benefits and risks. The federal government's oversight of the trucking industry is a case study of deregulation, as well as the difficulty of determining an exact calculus of its consequences. Though Ms. Edwards's family and the industry disagree on whether the motor carrier agency's actions contributed to her death, her accident illuminates crucial issues in regulating America's most treacherous industry, as measured by overall deaths and injuries from truck accidents.

The loosened standards, supporters say, have made it faster and cheaper to move goods across the country. They also say the changes promote safety; without longer work hours, the industry would be forced to put more drivers with little experience behind the wheel. Regulators and industry officials point out that the death toll of truck-related accidents — about 5,000 annually — has not increased, while the fatality rate, the number of deaths per miles traveled, has continued a long decline. The number of annual injuries has also been dropping slowly, falling to 114,000 last year.

"This administration has done a good job, and the agency has done a good job, in advancing safety issues in a manner that takes into account all the important factors of our industry," said the top lobbyist for the American Trucking Associations, Timothy P. Lynch.

But advocates of tighter rules say the administration's record of loosening standards endangers motorists. The fatality rate for truck-related accidents remains nearly double that involving only cars, safety and insurance groups say. They note that weakening the rules has reversed a course set by the Clinton administration and has resulted in the federal government repeatedly missing its own targets for reducing the death rate.

"It is a frustrating disappointment that has led to a tragic era," said David F. Snyder, an assistant general counsel at the American Insurance Association who follows the trucking industry closely. "The losses continue to pile up at a high rate. There has been a huge missed opportunity."

An Industry's Influence

In decisions that had the support of the White House, the motor carrier agency has eased the rules on truckers' work hours, rejected proposals for electronic monitoring to combat widespread cheating on drivers' logs and resisted calls for more rigorous driver training.

While applauded by the industry, those decisions have been subject to withering criticism by federal appeals court panels in Washington who say they ignore government safety studies and put the industry's economic interests ahead of public safety.

To advance its agenda, the Bush administration has installed industry officials in influential posts.

Before Mr. Bush entered the White House, he selected Duane W. Acklie, a leading political fund-raiser and chairman of the American Trucking Associations, and Walter B. McCormick Jr., the group's president, to serve on the Bush-Cheney transition team on transportation matters.

Mr. Bush then appointed Michael P. Jackson, a former top official at the trucking associations, as deputy secretary of the Department of Transportation. To lead the Federal Motor Carrier Safety Administration, the president picked Joseph M. Clapp, the former chairman of Roadway, a trucking company, and the leader of an industry foundation that sponsored research claiming fatigue was not a factor in truck accidents, a conclusion at odds with government and academic studies.

And David S. Addington, a former trucking industry official who led an earlier fight against tougher driving limits, became legal counsel and later chief of staff to Vice President Dick Cheney, an advocate of easing government regulations.

In addition to supplying prominent administration officials, the trucking industry has provided some of the Republican party's most important fund-raisers. From 2000 to 2006, the industry directed more than $14 million in campaign contributions to Republicans. Its donations and lobbying fees — about $37 million from 2000 to 2005 — led to rules that have saved what industry officials estimate are billions of dollars in expenses linked to tougher regulations.

But to the families of accident victims, the motor carrier agency has failed to fulfill a promise to significantly reduce fatalities, exacting a tragic personal price.

"They are not getting much done in Washington," said Daphne Izer of Maine, who founded Parents Against Tired Truckers in 1994 after a Wal-Mart driver fell asleep at the wheel of his rig, killing her son and three other teenagers in the car with him. "As a result, more people will continue to die."

Federal regulators disagree with that assessment of their performance. "We have made significant progress, yet much work remains to achieve our vision," said David H. Hugel, the new deputy administrator of the Federal Motor Carrier Safety Administration. "Our challenges also are increasing because our nation maintains the most extensive and complex transportation system in the world, and that system and number of people who use it continues to grow."

The federal government began overseeing the trucking industry in the 1930s, setting rates, limiting competition and regulating safety practices. From the start, companies won important concessions from Washington, including exemptions from minimum wage and other labor laws. The industry also resisted efforts to impose tougher safety standards, saying it could police itself.

In 1937, the first driving hour limits were set. Truckers were allowed drive up to 10 continuous hours but were required to rest for a minimum of 8 hours. The remaining six

hours could be used for other work activities, like loading, or for breaks or meals. Truckers could drive up to 60 hours over 7 consecutive days, or 70 hours over 8 days. To enforce those rules, the government required drivers to keep logs.

Repeated efforts over the years to tighten the rules were blocked, often as a result of vigorous industry lobbying.

Trucking companies have long argued that tougher standards are not necessary to promote safety, and that they would cause devastating economic pressures. Profit margins in the industry are thin, particularly after economic deregulation in 1980 prompted competition. Long hours and low pay for drivers have led to high turnover, and carriers struggle to find replacements. Those conditions, safety experts say, have contributed to widespread safety problems.

The practice of falsifying driver hours is an open secret in the industry; truckers routinely refer to their logs as "comic books." Fines are small. The federal motor carrier agency does not have the staff to monitor closely 700,000 businesses and almost eight million trucks.

Timothy L. Unrine, a 41-year-old driver from Virginia, said in a recent interview that he was taught to conceal excessive driving hours during training last January by his former employer, Boyd Brothers Transportation of Birmingham, Ala. Mr. Unrine said his orientation instructor told his class that government inspectors were allowed to examine a monthly logbook if it was bound. But if the staples were removed, the log was considered "loose leaf" and inspectors could require an examination of only those pages from the most recent seven days, Mr. Unrine said the drivers were told.

Company officials advised drivers to use fuel credit cards that recorded only the date, not the time, of the fuel stop, he said.

Mr. Unrine added that the company pushed him to work longer hours than permitted, and that his logbooks were "adjusted" many times to make it appear he was within the limits. Several times, when he told a dispatcher he was too tired to make another trip, he said, he was ordered to do so after just a few hours' sleep.

"I never felt safe driving under these conditions," said Mr. Unrine, who left Boyd last June because of a legal dispute over medical bills from a fall. "I talked to many drivers on the fuel islands, truck stops and rest areas. Logbooks are so fake; it scares me that there aren't more accidents on the road."

Richard Bailey, the chief operating officer at Boyd Brothers, and Wayne Fiquett, the company's vice president for safety, disputed Mr. Unrine's claims. They said that drivers might have been instructed to keep only seven days of log entries, but denied that they were encouraged to violate the rules.

"Nobody here will tell someone to do something unsafe," Mr. Fiquett said. "If a driver is tired or over his hours, the system will not allow that driver to continue driving."

In 1995, Congress directed regulators to study truck driver fatigue and its safety consequences and to consider new rules. But the agency then charged with truck safety, the Federal Highway Administration, never did so. Two years later, the Clinton administration vowed to cut the annual death toll of truck-related accidents in half within a decade. In 1999, Congress created the Federal Motor Carrier Safety Administration in response to what lawmakers considered ineffectual regulation and high casualties.

A year later, the agency proposed tighter service hour rules. They would allow long-haul drivers to work a maximum of 12 hours a day, and require them to take 10-hour breaks between shifts. They also required installation of electronic devices to replace driver logs.

Advocates of tighter standards said the rules did not go far enough, while the industry said cutting driver hours could raise costs by $19 billion over a decade, five times more than government estimates. Action stalled when trucking lobbyists inserted language into a spending bill that forced the motor carrier agency to delay action until after the presidential election that November.

Rewriting the Rules

Industry leaders overwhelmingly supported the candidacy of George W. Bush, confident that his administration would be friendlier than one led by his opponent, Al Gore. On the campaign trail, Mr. Bush accused his Democratic rival of wanting to expand government, while Mr. Bush repeatedly expressed his desire to reduce federal regulations.

During the 2000 election cycle, trucking executives and political action committees gave more than $4.3 million in donations to the Republicans and less than $1 million to Democrats, according to the Center for Responsive Politics, a nonpartisan research organization.

In the months before and after the election, a leading industry figure in the campaign against tighter driving rules was Mr. Acklie, who became chairman of the American Trucking Associations in the fall of 2000. A longtime Bush family friend and Republican fund-raiser, he led one of nation's largest trucking companies, Crete Carrier, based in Nebraska. Mr. Acklie, who stepped down from the post about a year after his appointment, did not return telephone calls seeking comment.

Another important advocate was Mr. Addington, then general counsel to the Trucking Associations. In August 2000, when two top transportation officials complained in a press release about the industry's "raw use of political power," he demanded that they be investigated for possibly violating a federal law that prohibits officials from lobbying and issuing propaganda. In January 2001, he joined Mr. Cheney's office, where he is now chief of staff. Lea Anne McBride, the vice president's spokeswoman, said Mr. Addington had not been involved in issues related to his trucking activities.

Other industry officials also joined the administration. Mr. Jackson, a former colleague of Mr. Acklie and Mr. Addington at the trucking group, became the No. 2 official at the Transportation Department, which oversees the industry. Mr. Clapp, the former head of Roadway trucking, took over the motor carrier agency and soon became involved in rewriting the rules.

The insurance industry and safety groups provided studies showing a high percentage of accidents were caused by tired truck drivers. But after the Trucking Associations produced a study concluding that only 2 percent of accidents were caused by fatigued truckers, while more than 80 percent were caused by passenger cars, the agency decided to loosen the hourly restrictions.

In April 2003, the agency issued rules that increased the maximum driving hours to 77 from 60 over 7 consecutive days and to 88 hours from 70 over 8 consecutive days. It capped daily work hours at 14, which included driving as well as waiting for loading and unloading. The agency also decided not to require truck companies to install electronic monitoring devices.

The agency said the new rules would modestly decrease the number of fatalities by increasing the required time off for drivers, to 10 hours from 8. A year later, the agency set training standards for new drivers: 10 hours of training, none of it on the road.

Congress has provided little scrutiny of the trucking standards.

"There has not been the kind of in-depth examination of these issues that should have occurred," said Representative James L. Oberstar of Minnesota, the ranking Democrat on the House Committee on Transportation and Infrastructure. Mr. Oberstar and others blamed the failure on the political muscle of the industry. From 2000 to 2004, the American Trucking Associations donated $2 million to lawmakers, mostly to Republicans who served on committees with jurisdiction over trucking issues.

The courts have played a more significant role. In July 2004, a three-judge panel from the federal appeals court in Washington issued a harsh opinion in a lawsuit brought by several safety organizations over the trucking work rules.

Judge David B. Sentelle, a conservative Republican appointed by President Ronald Reagan, wrote the opinion, faulting the Federal Motor Carrier Safety Administration for "ignoring its own evidence that fatigue causes many truck accidents."

The opinion continued, "The agency admits that studies show that crash risk increases, in the agency's words, 'geometrically' after the eighth hour on duty." The judges said they could not understand why the agency had not estimated the benefits of electronic monitoring, saying the agency's "passive regulatory approach" probably did not comply with the law. The panel struck down the hour and service rules.

But a year later, in August 2005, the agency issued virtually identical rules, which the safety groups and the Teamsters union are again challenging in court. Oral arguments are set for Monday before another three-judge federal appeals panel here. The agency had a similar legal setback on driver training. A three-member appeals court panel called the regulation "baffling" and criticized the agency for ignoring its own studies on the need for more comprehensive training.

The agency has not responded to the court's decision by issuing any new rules.

Meanwhile, the agency has failed, by growing margins, to meet its annual targets for lowering the death rate for truck-related accidents.

Mr. Hugel, the agency's deputy administrator, blames increasing traffic for the agency's inability to meet its goals. "More trucks, combined with even more passenger vehicles," he said, "leads to more roadway congestion, increased risk and a larger number of fatalities."

In a budget submission to Congress last February, though, the Transportation Department noted its repeated failure to cut the death rate and conceded that the agency "has difficulty demonstrating how its regulatory activities contribute to reaching its safety goal."

Safety experts, for their part, say the numbers reflect the agency's failings.

"The fatalities speak to the agency's lackluster performance," said Jacqueline S. Gillan, vice president of Advocates for Highway and Auto Safety, an alliance of consumer, health and insurance organizations. "These truck crashes happen one at a time in communities across the country and get little attention," Ms. Gillan said. "Can you imagine what the outcry would be at the F.A.A. if we had 25 major airplane crashes a year, which is the equivalent of what is happening with trucks?"

A Family's Lawsuit

After Ms. Edwards's death, her only son, Steve, a professional musician in Chicago, sued the trucking company, Werner Enterprises of Omaha, and the driver involved in the accident, John L. McNeal, 36. Mr. McNeal was dismissed shortly after the accident.

Mr. McNeal said in a sworn deposition that he had been tired from driving all day from Tennessee without a break. He had been in the cab for about 12 hours, including about 8 hours at the wheel. Because he had been driving trucks professionally for only a month, he was assigned a trainer, who had slept much of the trip.

After Mr. McNeal acknowledged he was at fault, Werner Enterprises settled the lawsuit for $2.4 million. Werner's general counsel, Richard S. Reiser, said that the company had a strong safety record and that its training program far exceeded the federal requirements. Mr. Reiser said that Mr. McNeal was in compliance with both the old and new work hour

rules but acknowledged he was unfamiliar with the proposals by safety groups that would have prevented the driver from working as long as he did that day. He also said that any driver who was tired should stop, regardless of how long he had been on the road.

"The driver should be the one who says, 'If I'm tired, I should pull over,' " Mr. Reiser said.

Mr. Edwards, though, thinks responsibility for safety goes beyond individual drivers, and links his mother's death to the Bush administration's decisions against imposing tighter driving limits. "These drivers are working hard every day on the road to make a living," he said. "They are overtired and underpaid."

Mr. Edwards said his mother, who had worked at a Procter & Gamble Company factory before her weakened knees forced her to retire, had been looking forward to traveling, gardening and playing with her grandchildren.

"If there is any silver lining, it is that he hit her so hard she never saw it coming," Mr. Edwards said of the accident. "She probably was happy that she was going to be home soon."

Ron Nixon contributed reporting.

The Dallas Morning News

Drivers bypass weigh stations; lobbyists help keep it legal

Tuesday, December 12, 2006

By STEVE McGONIGLE / The Dallas Morning News

Residents of New Waverly, Texas, don't need a brightly flashing road sign to know when the state's weigh station on Interstate 45 is open for business.

All they have to do is watch for the inevitable caravan of tractor-trailers making a brief course change through the one-stoplight hamlet, heading north toward Dallas.

"That's the local joke," said Walker County Constable Gene Bartee, who patrols the area's roads. "People try to go from Point ! A to Point B and say, 'Man, weigh strip must be open.' You can't get through town."

New Waverly, a one-time lumber town near Huntsville, is a small testament to the mighty power that trucking interests often wield over the Texas Legislature.

Last year, Walker County officials asked lawmakers to make it a traffic offense to bypass a weigh station, where troopers can do safety inspections. But after the trucking lobby depicted the proposal as revenue-driven and a potential source of harassment for honest drivers, the bill fizzled.

The weigh station bill was among dozens of trucking-related laws pitched during the 2005 legislative session. Trucking interests did not prevail on every issue, but their presence was hard to miss.

Tom Smith, director of the Texas office of **Public Citizen**, a nonprofit public interest group, said the trucking lobby is one of the most effective in Austin.

"Over the years, I've watched as our various bridge safety or weight standards have been waived for certain kinds of trucks, or licensing requirements have been altered because of the trucking industry wanting favorable treatment," he said. "They've got a large fleet of very well-respected lobbyists here who manage to make a lot of difference."

Legislators, who have little or no independent research staff, acknowledge that they often look to the trucking industry to educate them on issues. They seldom hear from safety advocates.

The result, Mr. Smith said, is that money routinely trumps safety: "There is no watchdog in the yard."

Every biennial session sees bills passed that create exceptions and advantages for commodities haulers and other large trucking businesses.

The net effect is a crazy quilt of laws and regulations that can vary by county, roadway or type of cargo. The rules often arise from requests to state legislators by trucking interests who! have co ntributed hefty campaign donations.

"It is haphazard at best," said Rep. Lon Burnam, D-Fort Worth.

A sly smile crossed Maj. Mark Rogers' face when the Texas Department of Public Safety truck safety supervisor was asked whether there were many special-interest trucking laws. He held up a dictionary-thick manual and said, "Here they are."

Sometimes truck laws are sweeping. More often they are incremental, pitched as a proposal with narrow impact and scant hint of controversy.

Heavy loads

Take the permits law pushed for Chambers County, an industrialized area that forms the eastern edge of the Port of Houston.

Passed by the Legislature last year, the law allows haulers of ocean-going cargo containers to carry loads up to 25 percent over the 80,000-pound legal weight limit on portions of two state roads serving the Cedar Crossing Business Park.

The 15,000-acre facility is in a developing area southeast of Baytown. Tenants include one of the nation's largest Wal-Mart distribution centers.

The location across from the port posed a challenge for shippers who wanted to use the maximum capacity of cargo containers but were precluded by state weight limits. To be legal, they had to divide loads and have trucks take a 20-mile detour to the port.

Enter Rep. Craig Eiland, whose district includes Chambers County. A bill filed by Mr. Eiland, D-Galveston, established a "heavy haul corridor" that let trucks weighing up to 100,000 pounds use a five-mile stretch of road connecting Cedar Crossing to a barge terminal.

The bill breezed through the Legislature without opposition.

The idea was based on a 1997 corridor law that permitted overweight steel-haulers from Mexico to use two state roads to reach the Port of Brownsville.

In 2003, the Port of Victoria also received legislative permission to create a mile-long heavy truck corridor linking its own industrial park to a barge terminal.

"! It was all part of a much larger project to bring [cargo] containers to and through Victoria, all part of the economic development of this particular area," said Howard Hawthorne, executive director of the Port of Victoria.

Safety was also a factor, Mr. Hawthorne said. Permitting trucks to haul heavier loads required fewer trips and reduced the number of trucks on the road.

There are no accident statistics for the Victoria and Chambers County corridors, which have not begun operating. Eighteen truck crashes occurred on highways in the Brownsville corridor between 2000 and 2006, none fatal.

Overweight corridors could arise around Texas because of the growth of inland ports such as the one Union Pacific opened in Wilmer last year. The Trans-Texas Corridor highway project envisions a network of rail-to-truck transfer facilities.

"The individuals promoting these kinds of areas near ports are definitely going to say I want [a heavy haul corridor], too. So there is going to be this kind of pressure, and at the moment it's not really come in a coherent way," said Robert Harrison, deputy director of the University of Texas' Center for Transportation Research.

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One-eye rule

The history of truck regulation in America reads like an anthology of accommodation to important economic interests.

Federal law requires states to follow the national model of truck safety regulations or risk the loss of financial aid for enforcement. The idea was to reform a state-by-state regulatory scheme that shorted safety and posed undue hardships on truckers.

But, as a result of intense pressure from the states, Congress established broad grandfather rights and enforcement tolerances that provide leeway in size and weight limits and driver qualifications for operations that do not cross state lines.

The Federal Motor Carrier Safety Administration is supposed to monitor states' compliance with federal rules, but critics contend enforcement is ! lax beca use of the agency's lack of resources.

In Texas, for example, intrastate truck drivers can obtain a license at age 18, rather than the federal minimum of 21. They can drive an hour longer per day, have a shorter rest period between work shifts and may not have to keep a logbook, which records maintenance as well as their hours at work and rest.

Intrastate drivers born before August 28, 1971, are not required to have medical certificates. Drivers missing a limb or with full vision in only one eye can apply for a waiver of physical standards if they have a clean driving record.

Art Atkinson, a truck safety specialist from Glendale, Ariz., was hired to testify for a Dallas man who suffered severe brain injuries in a 2002 collision with a truck driver who was legally blind in one eye. The man was driving under a DPS waiver.

Because vision in only one eye can affect depth perception, DPS requires those seeking waivers to take and pass a test on that ability.

Mr. Atkinson said the Texas vision and limb waivers, like a similar federal program, reflect the political and economic clout of trucking interests.

"It makes no logical or scientific sense to do that," he said. "The only logical reason appears to be to expand the available driver base."

The Texas rule with one of the broadest implications ignores a requirement that non-English-speaking truck drivers be taken off the road.

Both the federal government and the Commercial Vehicle Safety Alliance, a consortium of state enforcement agencies of which Texas is a member, require English comprehension by truck drivers.

Maj. Rogers said DPS defers to employers to enforce the English comprehension rules. That approach is rooted in pragmatism and "politics," he said.

"If we were to go ahead and put everyone out of service that couldn't speak and read the English language ... we would have significant ancillary problems that we would have to deal with as well," he said with a knowing look toward two other truck safety officials.

He said he did not believe the English-comprehension approach had adversely affected road safety. But he did not make that claim about all changes proposed by the Legislature, most of which deal with size and weight issues.

State agencies, including DPS, are not permitted to offer opinions on proposed legislation. Officials may answer questions, but only when lawmakers ask them.

"If they don't call us up there to testify," Maj. Rogers said, "we don't have any voice in that decision."

Two members of the House committee that oversees DPS said they routinely consult on trucking issues with that agency and with the Texas Department of Transportation.

DPS has the ability to analyze the impact that legislation has on safety. But that has been hindered by computer problems, lack of staff and incomplete reporting of accidents and inspections by! local law enforcement agencies.

Maj. Rogers said he was not aware of any safety problems spawned by exemptions, waivers or other special interest trucking laws, though he acknowledged that heavier trucks are harder to stop.

Federal officials in Texas routinely approve dozens of law changes made by the Legislature and have never withdrawn funding for noncompliance.

Jerry Donaldson, senior research director at Advocates for Highway and Auto Safety in Washington, D.C., said the federal agency grants states a wide berth.

"Whatever the state wants to do beyond the minimum [weight] requirement, if they want to run 120,000-pound trucks on two-lane, two-way county roads, they can do it," **Mr. Donaldson** said.

'A flawed issue'

One of the most controversial examples of an industry-driven change in Texas trucking laws was House Bill 2060 by former Rep. Sam Russell, D-Mount Pleasant.

Timber interests in Mr. Russell's East Texas district were upset by the efforts of some counties to impose fees for hauling overweight loads. The industry asked Mr. Russell to introduce a bill to impose a uniform, statewide fee system.

The "2060 permit" law took effect in 1989. While it was originally meant for haulers in rural areas, it is now used in nearly every county. More than 25,000 trucks may haul up to 84,000 pounds on county roads and bridges built to handle 58,420 pounds.

County commissioners have been trying since the law's creation either to revoke it or to increase the size of the fine and the proportion of fees they receive. Some counties have re-established their own overweight fees, a practice the timber industry is challenging.

Transportation researchers at the University of Texas and Texas A&M University have produced studies noting the disparities between damage to roadways caused by overweight trucks and the fees paid by permit holders.

The annual permit fee to operate in all 254 counties is $2,080. By comparison, it costs at least $150,000 to repave one mile of roadway. The state requires companies to post surety bonds for road damage, but none has ever been collected because of the difficulty in proving which vehicle was responsible for the roadway damage.

"It's a flawed issue," said Mr. Harrison, the University of Texas researcher. "And it just contributes to the problem of maintaining and preserving our [road] system."

Overweight trucks can also be more susceptible to accidents because of the longer distance required for such rigs to stop.

Over the past six years, according to DPS statistics analyzed by *The Dallas Morning News*, the 20 trucking companies with the most overweight permits were involved in more than 2,000 accidents across Texas.

With more road miles than any other state and second only to California in the amount of heavy truck traffic, Texas routinely leads the nation in the number of truck-related fatality accidents.

Chile pepper law

In Texas, it is not uncommon for a trucking law to be pushed by a single business interest. There are laws that allow milk or ready-mix concrete or oilfield service trucks to run extra heavy loads or timber haulers to operate with extra long loads.

"Almost every [legislative] district has a member of the trucking associations, and they do a great job of making sure their members are equipped with talking points and are in a position where they will call their legislators at critical moments and say this is good for our business and will keep Texas moving," Mr. Smith said.

Sometimes it only takes one person who knows whom to call upon for help.

All Gary Jackson of Seminole, Texas, wanted was to use a truck for compressed cotton bales to haul his chile peppers about 20 miles to a processing plant. Doing so would allow him to ship more chile peppers per load. But state law prohibited the cotton truck from being used to haul any other type of cargo.

Mr. Jackson was bewildered. "We weren't harming anybody. We weren't harming the roads. We didn't see the problem," he said.

Fortunately, Mr. Jackson found a sympathetic ear in Rep. Delwin Jones, R-Lubbock, a fellow farmer whose House district includes Gaines County, where Mr. Jackson has about 3,500 acres under cultivation for cotton, peanuts -- and chile peppers.

Mr. Jackson said he had been hauling chile peppers in his cotton module truck for a while when state troopers began writing him citations for an illegal use.

In February 2005, Mr. Jones introduced a bill to amend state law by expanding the legal use of cotton module trucks to chile peppers. The bill sailed through the Legislature without dissent and was signed by Gov. Rick Perry.

It was the third time in five legislative sessions that Mr. Jones pushed through changes to expand the size or usage of cotton module trucks, an innovation from the 1970s that revolutionized the efficiency of transporting raw cotton to a gin.

Texas, like other cotton-producing states, grants exceptions in its laws for cotton module trucks to enhance farm efficiencies. The vehicles are exempt from safety inspections. Drivers do not have to have commercial licenses. And trucks may exceed the size and axle weight standards imposed on other intrastate motor carriers.

Mr. Jones, a folksy octogenarian who ranks fourth in House seniority, said the chile pepper law improved safety in his district by reducing the number of trucks required to transport the peppers from farms to the processing plant.

All the law did, he said, was mend a quirk in state law to preserve the economic health of his district, one of the state's most productive agricultural areas.

Had the law not been passed, Mr. Jones said, farmers might have stopped growing chile peppers, and the spice plant might have been forced to close.

"It's preserved about 30 jobs in an area where 30 jobs is a lot of people," he said. "In fact, the jobs it preserved are upper-, upper-level income folks."

Influence brokers

The influence that trucking interests wield is difficult to measure. Contacts with legislators are done in private. Campaign contributions are difficult to trace because nontrucking companies often have a stake in trucking issues.

H.E. Butt Grocery Co. has a fleet of nearly 500 trucks. Its chief executive is Charles Butt, one of the wealthiest men in America. The San Antonio businessman has donated at least $1.6 million to state officials since 2000.

The Texas Motor Transportation Association, which represents most of the state's largest trucking companies, contributed $160,061, state campaign records show.

Bill Webb, former president of the association, said that his members were predominantly small operators and that the size of t he association's donations was evidence it is not among the Capitol's elite powerbrokers.

"You can't spend $40,000 or $50,000 a year in PAC money and be influential in Austin. It doesn't happen," said Mr. Webb, now a senior vice president with FFE Transportation, a large trucking company based in Dallas.

Sgt. Loni Robinson, former head of the commercial vehicle unit of the Pasadena Police Department, said the trucking lobby's clout is flexed through its contacts.

"It might not be the money, per se, but it's the people they know. The movers and shakers,' " Sgt. Robinson said.

Key legislators on truck safety issues acknowledge that they lean on the trucking lobby, along with state enforcement officials, to educate them on the issues.

"Generally we try to go to the trucking industry, their folks, their head people and then try to bounce those off DPS folks and just basically other reps who's had problems, had concerns," said Rep. Joe Driver, R-Garland, chairman of the House Law Enforcement Committee, which oversees the Department of Public Safety.

Mr. Webb readily acknowledged the advisory role.

"We're really the go-to group on trucking issues. Most of the time the Legislature gives us deference on those kind of things," he said.

While DPS is not always present to testify, trucking interests are ubiquitous. Representatives of interest groups routinely appear to give the industry's view, which usually focuses on financial issues.

Sgt. Robinson said he has seen the Texas Motor Transportation Association's power in Austin limit the number of enforcement officers.

"They'll tell you to your face safety is important. Absolutely, safety is important. Then they'll go behind closed doors and say they [local governments] are just trying to make money off of us. They're just trying to write us a bunch of tickets."

With the New Waverly weigh station bill, both Mr. Webb's association and the Texas Logging Council accused supporter s of having a hidden agenda to raise local revenue off truckers who bypassed the station for "legitimate" reasons.

Paul Hale, state coordinator of the logging council, accused DPS of rerouting local trucks off back roads to weigh stations to boost their citation numbers.

"We don't condone trucks hauling overweight or doing anything illegal," said Mr. Hale, a retired timber hauler from Bloomburg. "But their law would have been something like communism, which allows anti-trust, which allows [state troopers] to just go and say you are guilty of everything that we can imagine so we are going ... to do anything we want to you."

E-mail trucks@dallasnews.com

TRANSPORTATION-RELATED POLITICAL CONTRIBUTIONS

Contributions from January 2000 to October 2006 made by companies and associations through their political action committees (PACs), which often have different names.

CONTRIBUTOR	ADDRESS	TYPE OF BUSINESS	AMOUNT
TRUCKING TRADE ASSOCIATIONS			
Texas Motor Transportation Association	Austin	freight companies	$160,061
Texas Towing and Storage Association	Austin	towing companies	$ 32,450
Southwest Movers Association	Austin	home moving companies	$19,750
PACKAGE DELIVERY			
United Parcel Service	Atlanta, Ga.	package shipping	$425,755
OIL MARKETING			
Texas Petroleum Marketers and Convenience Store Association	Austin	petroleum products	$503,116
BEVERAGE DISTRIBUTORS			
Wholesale Beer Distributors of Texas	Austin	beer	$733,722
Beer Alliance of Texas	Houston	beer	$363,241
Licensed Beverage Distributors	Austin	liquor	$267,717
Coca-Cola Enterprises Inc.	Atlanta, Ga.	soft drinks	$190,280
Texas Beve! rage All iance of the Texas Package Stores Association	Austin	liquor	$189,975
ROAD CONSTRUCTION			
James D. Pitcock	Houston	CEO, Williams	$904,250

		Brothers Construction Co.	
Zachry family members	San Antonio	executives, Zachry Construction Corp.	$665,515
John Victor Lattimore Jr.	McKinney	CEO, Lattimore Materials Co.	$605,700
Texas Aggregates and Concrete Association	Austin	trade association	$650,150
H.B. Zachry Construction Corp.	San Antonio	road construction	$386,838
Coalition for Better Transportation	Dallas	highway advocacy group	$288,250
Texas Industries Inc.	Dallas	road materials	$204,482
Texas Good Roads/Transportation Association	Austin	highway advocacy group !	$72,350
Highways of Texas	Houston	road construction	$37,000
CEMEX Inc.	Houston	road materials	$34,635
Vulcan Materials Co.	Fort Worth	road materials	$19,790
AGRICULTURAL			
Lonnie "Bo" Pilgrim	Pittsburg, Texas	chairman, Pilgrim's Pride Corp.	$2,120,243
Texas Farm Bureau	Waco	farmers	$741,618
Texas and Southwestern Cattle Raisers Association	Fort Worth	cattle	$522,377
Texas Cattle Feeders Association	Amarillo	feed lots	$290,518
Texas Association of Dairymen	Austin	dairy	$153,384
Texas Poultry Federation	Round Rock	poultry	$141,011
! Pilgrim's Pride Corp.	Pittsburg, Texas	poultry	$50,000
Texas Forestry Association	Lufkin	timber	$42,487
Texas Producc Association	Mission	fruits, vegetables	$28,050
RETAILERS			
Alice Walton	Mineral Wells	heiress, Wal-Mart Stores Inc.	$660,000
Wal-Mart Stores Inc.	Bentonville, Ark.	retail	$324,585
Home Depot Inc.	Washington, D.C.	retail	$37,169
GROCERY			

Charles Butt	San Antonio	CEO, H.E. Butt Grocery Co.	$1,646,747
Drayton McLane	Temple	chairman, The McLane Group	$388,000
H.E. Butt Grocery Co.	San Antonio	gr ocery stores	$76,628
McLane Company Inc.	Temple	grocery distributor	$71,250
MARITIME			
West Gulf Maritime Association	Houston	overseas shipping companies	$74,150
RAILROADS			
Union Pacific	Washington, D.C.	freight hauler	$935,144
Burlington Northern Santa Fe Railway	Washington, D.C.	freight hauler	$592,490
LABOR UNIONS			
International Brotherhood of Teamsters	Washington, D.C.	truck drivers	$765,370
Houston Pilots Association	Houston	ship pilots	$123,850
General Drivers, Warehousemen & Helpers	Dallas	truck drivers	$108,000
WASTE			
Waste Management Inc.	Washington, D.C.	garbage collection	$137,250

Note: Dollar amounts are based on *Dallas Morning News* research of campaign finance records filed with the Texas Ethics Commission. Because of wide variations in some contributors' names, total contributions may actually be higher. This list represents a sample of trucking interests that gave to Texas political causes.

ABOUT THIS SERIES

Reporters for *The Dallas Morning News* have spent a year investigating safety problems involving 18-wheelers in Texas. Their reporting is based on federal, state and local accident and inspection reports and databases, court records, criminal public records databases and interviews with truckers, company owners, law enforcement, lawyers, academicians and other safety experts. Stories in this installment focus on the use of felons as drivers, the harsh working conditions truckers face and the industry's political influence in shaping laws and regulations. For previous stories in the **Road Hazards** series, please see www.dallasnews.com/roadhazards. If you have information you would like to share, please e-mail **trucks@dallasnews.com**.

Sunday: The national s! hortage of truck drivers is prompting many companies to tap into a captive audience.

Monday: Hundreds of truckers die on the job every year, among the highest death tolls for U.S. workers.

Today: Even though states must comply with federal truck safety laws, Texas has created a crazy quilt of exceptions to satisfy special interests.

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DallasNews.com
The Dallas Morning News

Truckers' long hours, high stress take toll

Industry's pressures lead many drivers to an early grave while endangering others on the road

07:43 AM CST on Monday, December 11, 2006

By JENNIFER LaFLEUR / The Dallas Morning News

Second of three parts

Truck driving is one of the country's most dangerous jobs, with tens of thousands of injuries and hundreds of deaths each year.

KYE LEE/DMN
Shirley James says husband Lonnie Cutberth was constantly being called back out onto the road. He died of a massive heart attack while driving in April 2001. 'The coroner said it was a miracle he got that truck off the highway without killing somebody,' Mrs. James said.

Nearly 1,000 U.S. truck drivers died on the job last year – one-sixth of all worker deaths, according to federal statistics.

It isn't the deadliest job – professional fishermen and logging workers die at much higher rates. But for every 100,000 truckers on the road, 29 die. That compares with four out of 100,000 for all workers.

The toll doesn't count drivers who, in a high-pressure, physically taxing job, work themselves to early deaths from heart attacks, strokes and other health problems. And the mechanisms in place to ease that pressure, some experts say, fail to protect truckers – and in turn, the drivers with whom they share the road.

"I believe that the stress on the body of running a 24-7 operation with chaotic schedules that never become routine is the major contributor to all this disease," said John Siebert, project manager for the Owner-Operators Independent Drivers Association Foundation.

"Truckers will say they learn to live with it, but it's actually killing them a little at a time, and they are dying at a tragically younger age than the rest of society."

Deadly profession

Shirley James of Lewisville said she can't count the number of times her trucker husband would "barely walk in the door before the company he contracted with would be calling to tell him they had another load."

Her husband, Lonnie Cutberth, promised the company that he could haul one more load to Little Rock in April 2001. They were counting on him, Mrs. James remembered him saying, even though he did not feel well.

Despite his wife's urging to stay home and rest, Mr. Cutberth delivered the load on schedule and headed back home. Calling from the road, he told his wife he didn't feel well. In his last call, he said he was going to pull over and rest. He signed off with the usual "I love you."

Minutes later, Mr. Cutberth had a massive heart attack. He managed to pull the truck into a weigh station outside Hope, Ark.

"The coroner said it was a miracle he got that truck off the highway without killing somebody," Mrs. James said.

Mr. Cutberth's death, six weeks before his 62nd birthday, was the second among a group of four truckers – friends since they started driving together more than 30 years earlier. Within five years, three had died.

Wayne Phillips is the only one left.

A decal on his truck memorialized his friends. "I used to say all three of them were driving with me."

Mr. Phillips did not escape health problems either. He survived two heart attacks, although neither occurred on the road. And after more than 40 years of driving and a recent bout of health problems, he sold his truck last summer. He still works occasionally as a substitute driver.

"I can't get away from it. I've been doing it too long," said Mr. Phillips, 69.

His losses over the years go beyond his closest friends, he said. Other colleagues have died as well, many from heart attacks.

"You don't sleep right. You don't eat right. And you're always under stress to get from here to there," Mr. Phillips said.

Illness, fatigue

That, experts say, can be detrimental not just to the driver but also to others on the road.

A federal study released in March found that truck driver illness was at least one of the causes in accidents involving a truck and a passenger vehicle about 12 percent of the time. And those figures don't include accidents where the driver was fatigued.

Computing the true toll of sleepy drivers is tricky, said Dr. Michael Belzer, a professor of industrial relations at Wayne State University who led a 2003 international conference on truck driver health. "Unless you find a fatigue-o-meter, it's not so easy to monitor."

Long hours and erratic schedules don't just result in sleepy drivers. Chronic sleep deprivation can lead to increased risk of obesity and diabetes.

Chaotic schedules can throw normal hormonal production into total disarray, said Mr. Siebert of the owner-operators association. "By disrupting that, you're throwing big wrenches, not just little handfuls of sand, into the gears of your body."

Erratic schedules prevent many truck drivers from getting regular medical care. And truckers, who spend long periods away from home, have higher-than-normal rates of depression and suicide.

A review by the owner-operator association of records on 1,200 deceased members found that the average age at death was 55, about 20 years earlier than the typical American.

The National Institute for Occupational Safety and Health is expanding that study to about 5,000 deceased members of the owner-operator association. NIOSH ramped up its study of transportation workers' health after Dr. Belzer's 2003 conference. And he hopes that such research will shed light on the cost-benefits of healthier drivers.

When experienced drivers have to quit at age 50 because of health problems, he said, "all that human capital invested, all the capacity it provides, is lost."

If they don't have health insurance, it puts the burden on the taxpayers, he said: "And no one is paying for the fact that these drivers die young. No one is paying for the loss to the families."

Prior research on trucker health prompted government agencies and trade groups to launch wellness programs.

Under a 1998 program backed by the American Trucking Associations and what was then the Federal Highway Administration, 500 truckers received free memberships to a chain of truck-stop gyms. No study results were published, and it's not clear how many truckers took advantage of the program.

Another federal information campaign makes videos, workbooks and training materials on healthy living available to truck drivers, insurance companies and trucking organizations.

But it's difficult for workers who are already pushing themselves to take the time to exercise, said Dr. Belzer, who spent 10 years as a trucker before attending graduate school.

Those programs are good, but real reforms need to come through policy and economic change, he said.

The years of undercutting the competition to improve the bottom line, brought on by the deregulation of the 1980s, has meant that truck drivers are paid less and pushed harder.

Whistleblowers

Truckers fired for refusing to break the law by falsifying their logbooks or driving too many hours may file a complaint with the U.S. Department of Labor. The 1982 Surface Transportation Assistance Act protects them from retaliation by their employer for reporting safety problems.

Truck driver Ron Stauffer filed such a complaint in 1999 when he was fired after 11 years as a driver for Wal-Mart. He had refused to wait at a loading dock where he was told he could sleep during a two-hour delay before dropping off his trailer and picking up another. He argued that he would be too tired to change trailers and that driving after interrupted sleep would be dangerous.

The administrative law judge dismissed the case, saying that Mr. Stauffer did not provide evidence that he would be too tired to shuttle the trailers.

Mr. Stauffer said that he had already put in at least a 14-hour day and that an interruption would mean he would be driving tired the next day.

"You don't have the sleep foundation you need," he said in an interview. "And that leads to truck driver heart attacks."

About two-thirds of the 1,115 complaints filed under the program over the last five years were dismissed. Others were settled or withdrawn; 33 resulted in litigation.

The Federal Motor Carrier Safety Administration in 1998 established a safety violation hotline for employees of transportation companies. The complaints that come in – 7,148 in 2005 – are forwarded to field offices near the carriers, which investigate the complaints.

But reporting their employer is just too risky for some drivers.

"What kind of whistleblower protection can you have in an industry that already has more than 100 percent turnover?" Mr. Siebert asked.

Dr. Belzer said that better pay for drivers would not only improve trucker health – because drivers wouldn't have to kill themselves just to get by – but it would increase road safety. His research shows that increased driver pay improves companies' safety records.

The real change needed, said Mr. Siebert of the owner-operators association, is to revamp how truck drivers are paid. Currently, many drivers are paid by the mile.

"If we could pay drivers by the hour ... they would be safer because they wouldn't be under the pressure to get the miles in. They're rushing, and they're stressed," he said. "We don't pay doctors by the stitch."

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ABOUT THIS SERIES

Reporters for *The Dallas Morning News* have spent a year investigating safety problems involving 18-wheelers in Texas. Their reporting is based on federal, state and local accident and inspection reports and databases, court records, criminal public records databases and interviews with truckers, company owners, law enforcement, lawyers, academicians and other safety experts. Stories in this installment focus on the use of felons as drivers, the harsh working conditions truckers face and the industry's political influence in shaping laws and regulations. For previous stories in the **Road Hazards** series, please see www.dallasnews.com/roadhazards. If you have information you would like to share, please e-mail **trucks@dallasnews.com**.

Sunday: The national shortage of truck drivers is prompting many companies to tap into a captive audience.

Today: Hundreds of truckers die on the job every year, among the highest death tolls for U.S. workers.

Tuesday: Even though states must comply with federal truck safety laws, Texas has created a crazy quilt of exceptions to satisfy special interests.

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Reviews make roads safer but rarely happen

07:21 AM CDT on Tuesday, September 19, 2006

By STEVE McGONIGLE, JENNIFER LaFLEUR, GREGG JONES and HOLLY BECKA / The Dallas Morning News

Last of three parts

By the time a state investigator visited SDS Trucking Inc. in April 2005, the Midlothian building materials hauler had been in 10 traffic accidents in 12 months. One accident killed a motorcyclist, and four others injured 12 people.

An in-depth examination of the company's records found enough safety violations to earn SDS a rating of unsatisfactory, the lowest possible in the compliance review system that Texas uses to evaluate trucking company safety. Two months later, the Texas Department of Public Safety ordered SDS to cease operations.

Research suggests that the threat of shutdown implicit in a compliance review reduces truck-related accidents and saves lives. One expert called compliance reviews "the nuclear weapon" of safety enforcement.

DPS officials, too, regard compliance reviews as one of their most effective tools in improving the safety performance of high-risk motor carriers.

But last year in Texas – which leads the nation every year in deaths from large-truck accidents – DPS completed compliance reviews for only one of every 10 companies it identified as the biggest potential dangers on the road.

"There are just a whole lot of companies that slide under the radar screen and never do get audited," said Bill Webb, the immediate past president of the Texas Motor Transportation Association, which represents trucking companies.

An underused weapon

DPS officials say they reserve compliance reviews for the worst offenders. But they don't automatically investigate trucking companies blamed for fatal accidents or repeatedly ordered off the road for safety violations, records show.

Texas has one of the nation's highest rates of unsafe trucks ordered off the road, but even a company's 100 percent failure rate during roadside inspections was not enough to prompt a DPS compliance review in most instances.

The Dallas Morning News analyzed several years of records from DPS, which regulates intrastate truck traffic, and from the Federal Motor Carrier Safety Administration, which regulates interstate traffic. *The News* found that in 2005:

•DPS took no enforcement action in half of its investigations. Even in cases in which companies were fined, the penalty was reduced nearly 40 percent of the time.

•Fewer than 5 percent of reviewed companies were ordered to cease operations, and not all of those shut down because DPS doesn't always do follow-up checks.

•For the agency to audit all the companies flagged as potential safety hazards, it would have to do 10 times the number of compliance reviews it currently conducts.

•About 10 percent of the compliance reviews were canceled because investigators did not meet an internal deadline for completing them. Others were halted because trucking companies said they were going out of business or DPS couldn't find them.

Too few inspectors

Lack of resources is a common explanation. DPS has 632 troopers and civilian inspectors to enforce safety rules on more than 64,000 commercial trucking companies in Texas.

The department's only staffing increases since 1999 have been financed with federal funds that required personnel to be assigned to truck inspection stations along the Mexican border. Texas receives the highest amount of federal funding of any state because of truck safety concerns along the border.

DPS assigns only about 50 of its Commercial Vehicle Enforcement staff to conduct compliance reviews – the same number as a decade ago, when there were about 30 percent fewer trucking companies on the state's nearly 302,000 miles of roadways.

The bulk of the agency's troopers do road inspections, which DPS thinks is the best way to improve road safety.

Department officials acknowledge their enforcement efforts would benefit from additional resources. But they insist they are doing an effective job of regulating truck safety during a period of historic expansion of truck traffic in Texas.

"Undoubtedly, we would love to do more CRs [compliance reviews]," said Capt. David Palmer, commander of the DPS Motor Carrier Bureau. "And I can tell you we are doing as many CRs as we can. We're just doing as many as we can with the resources we have."

The Texas Motor Transportation Association, which represents larger and more established trucking firms, has long pushed for DPS to conduct more compliance reviews and to refocus its enforcement scheme, Mr. Webb said. He and fellow critics argue the DPS approach frequently misses outlaw companies that run their trucks on back roads.

Ian Savage, an economics professor at Northwestern University, is one of the national experts who also advocates redirecting resources from roving roadside patrols to compliance reviews. He thinks the system that uses inspections to target compliance reviews should be flipped on its head.

"When you get to CR, you know some enforcement is going to happen. They come do things like rummage through your files. That's why they seem to have a pretty major effect," said Dr. Savage, who co-wrote a 1992 study of compliance reviews.

"The compliance review is the biggest tool for enforcing safety. It's like wheeling out the nuclear weapon. It's the only thing you can do as part of a threat to close a firm down. Whenever you have an enforcement activity – this is the ultimate sanction."

The Federal Motor Carrier Safety Administration also believes there is a direct correlation between compliance reviews and crashes. In 2002, a study conducted for the federal agency estimated that 9,172 compliance reviews done on interstate carriers prevented 1,426 accidents and saved 62 lives.

Last year, 7,930 compliance reviews were done on interstate carriers nationwide – about 2 percent of all interstate trucking companies, according to the federal agency's records.

Targeting the problem

DPS has been conducting compliance reviews since the early 1990s to comply with federal law. It used federal money to hire its first investigators, and continues to be reimbursed for every compliance review it conducts.

The agency identifies which companies should receive compliance reviews through a combination of indicators compiled largely by troopers doing spot inspections.

Companies can be targeted for compliance reviews if they have a fatal accident in which the carrier was at fault or an "out-of-service rate" greater than 15 percent over three inspections in one year.

A trooper can put a truck out of service, pending repairs, for mechanical problems such as worn tires or faulty brakes. Truckers can be ordered off the road if they are found to be impaired or have missing or falsified driver logs, which are supposed to show how many hours of driving and rest they've had in a 24-hour period. Any inspection in which either a driver or truck is put out of service counts as an out-of-service inspection.

Complaints from police officers, Texas residents, legislators and state agencies can also trigger compliance reviews. And companies can request them to improve their safety rating, which can lower their insurance premiums.

Companies that are involved in fatal accidents or those that are the subject of officer complaints take top priority, DPS officials say, followed by excessive out-of-service rates, updated every two months.

Capt. Palmer said officer complaints typically lead them to the worst companies, and out-of-service rates are good indicators of a company's fitness.

But according to *The News'* analysis, less than half of all compliance reviews prompted by officer complaints or high out-of-service rates resulted in any kind of action against the company. And only 37 percent of fatality-related reviews resulted in any enforcement action.

The Federal Motor Carrier Safety Administration uses a more sophisticated system to target problem carriers for compliance reviews. Known as SafeStat, the system's algorithm calculates safety ratings based on accident rates, driver and vehicle inspections and the extent of company oversight. In February 2004, after much criticism of the SafeStat system, the U.S. Transportation Department's inspector general recommended that the formula be re-evaluated – a process still under way.

Safety reviews

In 2005, Texas conducted nearly 325,000 roadside inspections on more than 50,000 carriers – nearly 70 percent of them interstate carriers regulated by the Federal Motor Carrier Safety Administration. DPS records show that inspectors completed 774 compliance reviews on truck companies selected from an agency priority list of fatality reports, law officer complaints and companies with high out-of-service rates. More than 40 percent of DPS' compliance reviews were on Texas-based interstate carriers, which are regulated by the federal government.

But those reviews scrutinized less than 10 percent of the total number of companies that met what DPS said were its criteria for conducting a compliance review.

The News found 123 companies whose vehicles or drivers were the only contributing factors in fatal accidents. Of those, only 48 received compliance reviews.

Many times, compliance reviews were ordered but not completed. DPS internal policy requires officers to complete reviews within 90 days to ensure the data they are acting on is current. After that, the review is canceled.

The News' analysis revealed that in 2005, DPS dismissed about one-tenth of the 1,182 compliance reviews it started because investigators missed the deadline. After being told

the newspaper's findings, DPS officials said they would consider extending the compliance review deadline to 180 days.

Capt. Palmer agreed with the newspaper's findings on the percentage of compliance reviews that ended in enforcement actions. But, he said, the number of reviews triggered by fatal truck accidents "sounds low."

Without commenting on specific cases, he said the internal DPS deadline and companies going out of business explained why compliance reviews were not conducted when DPS policy dictated they should be.

Driver logbooks, records of positive drug or alcohol tests, employee background checks and maintenance records all come under scrutiny during a compliance review. Depending on the size of the company, it can take an investigator a few days to a few weeks to complete the onsite visit.

The reviews determine whether companies receive a safety rating of satisfactory, conditional or unsatisfactory. A conditional rating can affect insurance rates. An unsatisfactory rating forces a company to cease operations until it corrects its problems.

A company under review can face anything from fines as high as $16,000 per violation per day to an order to shut down. Between January 2005 and June 2006, DPS assessed nearly $2.5 million in fines and collected a little more than $2 million. Companies may also appeal fines in an informal hearing with a DPS captain, who can uphold, reduce or dismiss the entire penalty.

In the case of SDS Trucking, for example, the company appealed its "unsatisfactory" rating and $1,420 fine and got its ranking upgraded to "conditional." But a second audit in July 2005 found other problems with the company, and it was fined another $2,000. The federal trucking agency canceled the company's authority to operate outside Texas in April 2005 after its insurance was canceled. State records show SDS is still in business and has insurance to operate within Texas.

Stan Emelogu, president of SDS, said his company had only two fatal crashes in 2005 and 2006 and neither was his truckers' fault. "This is a racist business," said Mr. Emelogu, a Nigerian immigrant. "There is no chance for somebody like me to survive in it."

SDS paid the fine, he said, and now uses a safety consultant to advise its 10-truck business.

Doing it better

While Texas leads the nation in roadway miles and is second only to California in the number of registered trucks, it trails other states when it comes to enforcement.

California, the only state that exceeds the volume of trucks in Texas, has a lower fatal accident rate and far lower rates of unsafe vehicles and drivers ordered off the road. It assigns 25 percent of its commercial vehicle enforcement personnel, or about 250 inspectors, to compliance reviews, compared with about 7 percent of Texas' truck safety force doing reviews.

California spends $141 million a year on commercial vehicle enforcement, compared with Texas' $31 million, and conducts more than 10 times the number of compliance reviews as Texas each year.

Texas also lags far behind in technology that helps to identify unsafe carriers.

In many states, the inspection process has been streamlined by transponder systems that pre-clear companies that don't need to be pulled over, either because they have been inspected recently or have good safety records. Similar systems are used in Europe.

PrePass is one transponder system employed in 25 states by about 380,000 trucks. NORPASS operates in seven states on about 87,000 trucks. Some states, such as Oregon, have their own systems.

With most such systems, as carriers approach weigh stations, transponders in their vehicles signal green if they are pre-cleared. The transponder signals red if truckers need to stop.

"If you could have a system to look at which trucks to pull over and which shouldn't, you won't delay the safe trucks," said Dr. Savage of Northwestern University. "If you know statistics, you know you don't need 50,000 inspections to work out whether it's a good truck firm or a bad truck firm."

The anticipated cost of installing a transponder system in a state the size of Texas has been a major obstacle, said Assistant Chief Lamar Beckworth, DPS' second-highest ranking officer for truck safety. The department plans to ask the Legislature in January for additional funds to upgrade its technology.

DPS is missing out on other resources, as well. Over the past decade, it has strained to persuade the Texas Department of Transportation to help with infrastructure issues that would enhance safety enforcement.

An example of this disconnect is the fact that TxDOT operates 17 specialized "weigh-in-motion" scales around the state that supply information to monitor road surface conditions. The system is not connected to DPS, which must rely on quarterly reports from the other agency.

Penny-wise, pound foolish

Although more than two dozen municipal and county law enforcement agencies have truck enforcement units, DPS is the only state agency that can perform compliance reviews.

In 1996, DPS had 26 officers assigned to compliance reviews. That number rose to 46 in 1997, and it has remained nearly at that level since.

DPS said it plans to ask the Legislature for 50 civilian investigators to do compliance reviews. But those 50 new employees would replace the same number of commissioned officers now doing the job. Some DPS officials think the additional officers could result in a small net gain in the compliance review staff, though they cannot yet explain how.

The commissioned officers would be transferred to road inspections to increase the voluntary safety compliance that DPS deems its most effective enforcement tool.

"I get more bang for my buck if I can get more troopers back out on that highway," said Chief Beckworth. The Texas Legislature has not approved any increases in state funding to hire additional DPS Commercial Vehicle Enforcement staff since 1999. In 2001, legislators imposed a five-year moratorium on new state funding for more truck safety troopers.

State Rep. Lon Burnam, a member of the House Law Enforcement Committee, which oversees DPS, said Texas is getting the quality of truck safety it pays for.

"We are penny-wise and pound foolish on everything that we do," the Fort Worth Democrat said. "We are cheap, and we are not committed to good public service."

Online at:
http://www.dallasnews.com/sharedcontent/dws/spe/2006/roadhazards/stories/091906dnproTrucks3main.33db8b6.html

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TXI trucks involved in 31 accidents over the last two years

12:28 AM CDT on Sunday, September 17, 2006

By GREGG JONES, HOLLY BECKA, JENNIFER LaFLEUR and STEVE McGONIGLE / The Dallas Morning News

Texas Industries Inc. is a major player in North Texas' building boom, producing and hauling sand, gravel, crushed rock and concrete to area construction sites.

Its TXI Transportation Co. unit has a fleet of more than 150 leased trucks and more than 330 drivers, which traveled nearly 32 million miles in Texas and surrounding states last year, according to federal data.

Federal data show that TXI trucks sometimes get stopped for speeding, running stop lights, following too closely and getting involved in crashes – 31 that left people injured over the past two years and two that resulted in fatalities. (The data don't identify who was at fault.)

Inspectors also ordered TXI drivers off the road 40 times over the past two years for serious violations of safety regulations. Most involved drivers' logbooks, which are supposed to show how long a driver has been on the road. Such hours-of-service rules were strengthened in 2003 to cut fatal truck crashes caused by fatigue. The 40 out-of-service orders occurred during 1,098 inspections conducted in the 24 months prior to Aug. 31, 2006, according to federal data. By industry standards, TXI's driver out-of-service rate of 3.6 percent compares favorably with the 2003 national average of 6.78 percent.

In the same period, TXI's vehicles were put out of service 297 times in 1,031 inspections – an out-of-service rate of 28.8 percent, above the national average of 22.9 percent. The most common violations were defective or maladjusted brakes, bald tires, defective brake lights, improperly secured loads and cracked or broken wheel rims.

Despite the problems, TXI holds a "satisfactory" safety rating from the Federal Motor Carrier Safety Administration, the highest of three levels under the agency's oversight program. A satisfactory rating indicates "no evidence of substantial non-compliance with safety requirements," based on a review of the company's records on drivers, vehicles and trips, according to the FMCSA.

Mark Stradley, an attorney for TXI, said it was "difficult to verify the data" cited by the federal agency, but that TXI Transportation Co. had always maintained a "satisfactory" rating.

Out-of-service inspections present only a partial picture of the condition of a company's trucks and its drivers. Often, inspectors find problems but don't order a truck or driver off the road. In some cases, the trooper or civilian inspector makes a judgment call. In others, state or federal law proscribes: A single tire with less than 2/32 inch of tread, for example, isn't an out-of-service violation; a pair of tandem tires with less than 2/32 inch of tread is.

Online at:
http://www.dallasnews.com/sharedcontent/dws/spe/2006/roadhazards/stories/091706dnproTrucks1txi.18f4a29c.html

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In Wise County, truck accidents killed 56 people in 6 years

11:46 PM CDT on Sunday, September 17, 2006

By HOLLY BECKA, GREGG JONES, JENNIFER LaFLEUR and STEVE McGONIGLE / The Dallas Morning News

Second of three parts

DECATUR, Texas – It was 80,000 pounds of trouble. That's what Sgt. Robert Wilson concluded as he sized up the big rig before him.

A few minutes earlier, the 18-wheeler had been roaring down U.S. Highway 380, loaded with gravel for a Denton construction site, a disheveled, diabetic Army veteran at the wheel. Now, the rig sat in a line of trucks pulled over for unannounced roadside inspections by commercial vehicle inspectors with the Texas Department of Public Safety and the Federal Motor Carrier Safety Administration.

On one wheel a lug nut was missing and three others were loose. A tire was flat, and another had a split tread. There was also a cracked axle rim, six maladjusted brakes and a nonworking tail light, turn signal and brake light. Thirty minutes and 21 safety violations later, inspectors ordered trucker Orville Burris off the road until repairs were made.

Truckers like Mr. Burris crisscross North Texas every day, transporting rock, sand and gravel for new roads, homes and shopping malls around the Dallas-Fort Worth area. Rock haulers are among the hardest-working and lowest-paid drivers in the commercial trucking industry. Their trucks are among the most dangerous on the road, state and federal safety inspectors say.

"If the motoring public knew what was running down the road with them, they'd be really scared," said Senior Trooper John Pellizzari, a DPS Commercial Vehicle Enforcement officer in Wise County, notorious among state and federal truck inspectors for deadly crashes involving rock haulers.

Around the nation, big-truck accidents have become a daily occurrence. In the 12-county Dallas-Fort Worth metropolitan area, 467 people died in accidents involving big trucks from 2000 through 2005.

In rural Wise County, northwest of Fort Worth, 56 people died in accidents with big trucks in the same period, according to state data. In fact, Wise now ranks fourth in the state in truck-related fatalities, just behind three of the most populous urban counties. Many of these accidents involved rock haulers, state and federal authorities say.

"That tells us there is a significant problem," said Maj. Mark Rogers of the DPS Commercial Vehicle Enforcement Service in Austin.

Accidents involving rock haulers have become so frequent in Wise County that state and federal authorities have taken the unusual step of conducting mass inspections there several times a year.

Wise County illustrates another stark reality as truck traffic soars in Texas and the United States: The number of trucks far outpaces the ability of law enforcement authorities to enforce safety regulations.

Because of limited resources, DPS has assigned only four truck safety inspectors to monitor thousands of big rigs traveling Wise County roads every day. Kaufman County has the same number of vehicle enforcement officers even though it had only 15 fatalities in truck accidents between 2000 and 2005, compared with Wise's 56.

As a result, dangerous trucks and reckless drivers face little risk of getting inspected or ordered off the road.

"There are just so many trucks," said Trooper Randy McDonald, one of the state's inspectors for Wise County. "We're not touching very many of them."

His colleague, Sgt. Wilson, agreed: "There's so many of them, you just do what you can do, then get up in the morning and do it again."

Important industry

In Wise County, trucking companies support local charities and sports teams. Their tax dollars build parks and schools. Their employees belong to churches and civic groups and run for public office. And, sometimes, their trucks kill people.

Local residents have learned to live – and die – with these realities. Daily life along the county's main highways – State Highway 114 and U.S. Highways 380 and 287 – is a saga of broken windshields, tailgating trucks, near misses and sudden death.

"We know the industry is important, employs a lot of people and does a lot of things in this community," said Michael Simpson, a Wise County lawyer who has represented the families of people killed in dozens of truck accident cases. "You can do it right. There are trucking companies that do it right and do it right every day in this county."

When they do it wrong, the results are tragic.

Just before 11 on a September morning in 2004, 19-year-old Arturo Guerra Jr. pulled his white Chevy Suburban into a left-turn lane along Highway 114 in Paradise. The recent high school graduate waited for oncoming traffic to clear, his turn signal flashing.

Suddenly, a yellow 18-wheel rock hauler leased to L.H. Chaney Materials Inc. rammed into the rear of the Suburban at more than 50 mph.

The impact spun the sport utility vehicle into the intersection of Highway 114 and Olde Towne Road, into the path of another rock hauler approaching from the east. The second truck, leased to Aggregate Haulers I L.P. smashed head-on into the Suburban. Mr. Guerra's body had to be cut from the wreckage.

Chaney's driver, William D. Pettis, refused to speak with troopers at the scene. Later, under questioning from attorneys for the Guerra family, he said a pickup blocked his view of Mr. Guerra's vehicle until it was too late. Other witnesses testified that the pickup was ahead of Mr. Guerra and therefore couldn't have obstructed the trucker's line of sight. In any event, Mr. Pettis should have seen the Suburban from his vantage point high up in his truck's cab, witnesses testified.

Chaney, based in Denton County, initially blamed another vehicle for causing the accident. Nearly a year after the crash, facing trial in a wrongful death lawsuit, the company agreed to pay the Guerra family $2 million and acknowledged responsibility for the accident, according to a court document.

A jury later found that Aggregate Haulers and its driver weren't at fault.

Spot inspections

On most days, it's clear sailing for big trucks making the run from Wise County's 27 gravel pits and rock quarries to Dallas-area construction sites.

In fact, about 400 trucks pass the old Texas Department of Transportation yard at U.S. Highways 380 and 287 in Decatur every hour, according to DPS estimates.

But several times a year, federal and state inspectors pour into the yard for two days of surprise inspections. Troopers with DPS' Commercial Vehicle Enforcement Service stood along the highway on consecutive mornings in May, waving truckers into the inspection area or chasing them down in their souped-up pickups.

Level 1 inspections were the objective. The most thorough of federally mandated safety reviews requires inspectors to climb beneath trucks to examine tires, brakes, axles, trailer frames and other parts. Sgt. Wilson ran the show. Clad in blue coveralls, safety goggles and running shoes, the wiry DPS veteran lay on his back on a wheeled mechanic's creeper, propelling himself like a spider beneath the grimy trucks.

Even with more than two dozen reinforcements from around Texas, the teams of state and federal inspectors were able to check only about 20 trucks an hour.

But within a few hours, the lot was crowded with out-of-service trucks, awaiting the arrival of mechanics.

Surveying a Granados Trucking rock hauler that had been put out of service for maladjusted brakes and other problems and now wouldn't start, Trooper Pellizzari muttered: "Typical Wise County junk on the road."

By the end of the second day, 95 trucks had been checked and inspectors had ordered 30 of them out of service for various safety violations. In similar Wise County spot checks that followed, troopers inspected 145 trucks in June and put 42 percent of them out of service. They inspected 281 trucks in July and ordered 40 percent of them off the road.

Rodney Baumgartner, a senior Federal Motor Carrier Safety Administration official in Austin, said the agency needs to gather more data before tailoring a safety plan to address the deadly interplay of rock trucks and passenger vehicles in Wise County.

"We're trying to identify the real problem road areas and the problem companies," he said.

Problem companies could be targeted for compliance reviews, audits and education sessions. Trucking companies would be urged to have their drivers slow down, especially in urban areas, and to keep more distance between their rock haulers and the passenger cars on the road. Part of the solution also would be raising awareness about safe driving around rock trucks, he said.

"There's not one answer," said Mr. Baumgartner. "There's not one silver bullet."

A weighty exception

State troopers and commercial vehicle inspectors say many accidents involving rock trucks are caused by passenger vehicles that pull out in front or cut off the big rigs. Like any larger truck, 18-wheelers loaded with rock or sand can't stop quickly.

State regulations allow trucking companies to buy permits that enable them to exceed 80,000-pound gross vehicle weight limits – a widely used exemption that makes rock trucks even more dangerous. In Texas and other states, lawmakers approved certain exemptions to weight limits, as supported by businesses such as timber companies and rock haulers.

It's "simply a matter of physics," said Maj. Rogers. "The heavier it is, the longer it's going to take to stop. So, sure, safety is impacted."

With or without permits, rock haulers routinely run overweight, according to state records and commercial vehicle enforcement officers.

"They know they're overweight, but they're told by the companies to keep driving," Trooper Pellizzari said.

It's a problem around Texas, but with the DPS fielding only a skeleton force of truck safety officers in Wise County, the odds of getting away with breaking weight laws are especially good, officers said.

Texas has beefed up its truck inspection efforts over the last 10 years, with the help of federal grants. But, in response to the North American Free Trade Agreement and post-9/11 security concerns, most of the new inspectors have been assigned to counties bordering Mexico. And they focus on Mexican trucks, which are not allowed to proceed more than 25 miles beyond the border.

Mexican trucks crossing into Texas face more Level 1 inspections than 18-wheel rock trucks hauling 80,000-pound loads from pits and quarries in Wise County on North Texas streets and highways. But, over the last five years, rock haulers have been involved in more fatal accidents than Mexican-domiciled trucks that cross into Texas, according to state and federal data.

In major urban centers like Dallas and Fort Worth, the burden for enforcing truck safety regulations has increasingly shifted to local law enforcement agencies. Dallas County is one of 29 counties and cities in Texas that has created its own commercial vehicle enforcement unit to fill the gaps in the state's monitoring. Last year, the eight-member Dallas County force wrote 7,400 citations for commercial vehicle violations.

Rock trucks and other construction vehicles are a top priority, said senior Sgt. Chris Smith, who heads the Dallas County unit. Municipal police departments around Dallas County sometimes request help in cracking down on overweight rock trucks that are tearing up roads, he said.

Most of the money collected in roadside inspection fines goes to the counties, not the state.

Pay by the load

Profit margins are thin in the trucking business, and that translates into low pay for drivers, especially in the rock-hauling business.

Dallas lawyer Clay Miller, who has represented dozens of plaintiffs in wrongful death lawsuits against trucking companies, explained the economics of recruiting rock haulers.

"No. 1, you get whomever you can find," he said. "No. 2, you can't pay them much. So where the J.B. Hunts of the world and the higher-end trucking companies are paying 40

cents per mile, these rock haulers are paying 23, 24, 25 cents a mile. And so you're just not going to get well-qualified drivers."

Many, in fact, pay truckers a percentage of each load hauled, a practice that safety experts say encourages drivers to speed, to work longer hours each day than the law allows and to shortcut maintenance.

A Wise County lawsuit in the mid-1980s turned a spotlight on the longstanding practice. A speeding trucker who was paid by the load seriously injured a prominent local businesswoman and killed her friend. A jury ruled on that practice by awarding punitive damages, Wise County lawyers and others involved in the case said.

But the practice is still widespread. Interviews with drivers and lawyers and a review of Wise County lawsuits show that local rock haulers are still routinely paid by the load. Some companies pay drivers an hourly wage based on the number of loads hauled, according to court documents. Plaintiff's attorneys say that is an attempt by companies to conceal the practice of paying by the load.

Trucker Jody Spoelstra of Fort Worth, a big-rig driver for 18 of his 47 years, said he has always been paid by the load. He earns 23.5 percent of what his employer, GIT Excavating of Sanger, makes on his truck. That figures out to between $40 and $60 a load, he said. In warm weather, he averages about $700 a week, and sometimes pushes that to $800 by hauling a load or two on Saturday mornings.

"Winter is really bad," he said.

He earned only $600 last December, so he drives as much as he can in the summer. Up to 12 hours a day, Mr. Spoelstra hauls loads of gravel or sand from Wise County to construction sites around North Texas. He eats in his truck as he waits to load or unload.

Under Texas law, intrastate truckers can drive 12 hours without resting, an hour longer than interstate drivers. The theory is that driving shorter distances is less tiring. In reality, short-haul drivers routinely log as many miles in a day or week as long-haul drivers, and the driving conditions are often more stressful. Rock haulers making the Wise County to Dallas-Fort Worth run spend much of their day in heavy traffic and congested areas.

To increase their number of loads, many drivers fill their trucks the night before so they can get an early start. Some sleep in their cabs, even if it means napping upright. They drive fatigued and fudge their logbooks to avoid exceeding federal or state driving limits, court records show. Companies are supposed to carefully monitor the hours their drivers are on the road, but oversight is often lax, the records show.

Trucker Torrance Reeves, who had been driving just three weeks for Matbon Inc. when he pulled into the Decatur inspection lot, said he is paid by the load.

"We all get paid by the load," he said, adding that the inspection was costing him money. "It wears us out – we don't make any money doing this. For two weeks, I've been in these little [inspection] yards. I got a mortgage. It puts a hurt on everything."

Time wasn't all the inspection cost him. Although Richardson inspectors had given Mr. Reeves a passing score just a week earlier, by the time Trooper Pellizzari and his colleagues completed their review, Mr. Reeves' truck was out of service because of one flat tire and another that was losing its tread, maladjusted brakes and an overweight load.

Mr. Reeves complained that the inspections were unfair because drivers were held responsible for their employer's poor maintenance practices. Troopers ought to target the companies, he said, rather than drivers, who get citations on their driving records if troopers find problems with the vehicle.

"Once your license is screwed up, they're done with you," Mr. Reeves said of trucking companies. But the state inspectors "don't want to fight the companies. They'd rather fight the little people, go the path of least resistance."

Online at:
http://www.dallasnews.com/sharedcontent/dws/spe/2006/roadhazards/stories/091806dnproTrucks2main.3416336.html

ADVOCATES
FOR HIGHWAY
AND AUTO SAFETY

Federal Motor Carrier Safety Administration (FMCSA)
Legislated Rulemaking Actions and Studies, and Additional Agency Actions

Glossary:
► ***OVERDUE:*** This is either a regulatory proceeding, report, or other action whose legislated deadline was missed by FMCSA.
► ***DELAYED/INCOMPLETE:*** This is a delayed regulatory proceeding, report, or other action that Congress directed FMCSA to complete without specifying a time-certain deadline, or on which the agency has delayed action for an unreasonable or protracted amount of time.

TRUCK AND BUS SAFETY AND REGULATORY REFORM ACT OF 1988

- **Commercial Vehicle Driver Biometric Identifier:** Section 9105 of the Truck and Bus Safety and Regulatory Reform Act of 1988 directs the Secretary to issue regulations not later than December 31, 1990, establishing minimum uniform standards for a biometric identification system to ensure the identity of commercial motor vehicle operators. 49 U.S.C. § 31309(d)(2). An ANPRM was issued at 54 FR 20875 *et seq.*, May 15, 1989, followed by an Information Notice at 56 FR 9925, March 8, 1991. Congress subsequently amended the biometric identifier requirement in Section 4011 of TEA-21 to remove the mandate that commercial drivers specifically shall have biometric identifiers and substituted the requirement that CDLs contain some form of unique identifier after January 1, 2001, to minimize fraud and illegal duplication. The Secretary is directed to complete regulations to achieve this goal no later than 180 days after TEA-21 enactment, or by December 9, 1998.

  Status: FMCSA has withdrawn this rulemaking on May 5, 2005 (70 FR 24358), claiming that it "has met the statutory objective through other efforts." Semi-annual regulatory agenda, 70 FR 64841, 64998, October 31, 2005.

HAZARDOUS MATERIALS TRANSPORTATION UNIFORM SAFETY ACT OF 1990

- *OVERDUE* - **Nationally Uniform System of Permits for Interstate Motor Carrier Transport of Hazardous Materials:** Section 22 of the Hazardous Materials Transportation

Uniform Safety Act of 1990 directs the U.S. DOT Secretary to institute a nationally uniform system of permits necessary for motor carrier transport of hazardous materials. 49 U.S.C. §5119. The Secretary is directed to prescribe the necessary regulations "by the last day of the 3-year period beginning on the date the working group [established pursuant to § 5119(a)] submitted its report or the last day of the 90-day period beginning on the date on which at least 26 States adopt all of the recommendations of the report." The regulation must take effect one year after prescribed by the Secretary or, for good cause shown, later than one year. Section 5119(b)(2) directs that the advisory group's report be submitted to Congress by November 16, 1993. However, the working group formed pursuant to § 5119, the Alliance for Uniform Hazardous Materials Transportation Procedures, issued its final report on March 15, 1996.

Status: Despite the fact that the report documents widespread defects in state permitting practices which directly affect operating safety, two notices reviewing the report have been issued to date without any indication of agency willingness to institute the uniform permitting system directed by law 11 years ago. 61 FR 363016 *et seq.*, July 9, 1996; 63 FR 16362 *et seq.*, March 31, 1998. No further action has been taken to date and the agency has no acknowledgement of this Congressional mandate in its semi-annual regulatory agendas.

- ***General Transportation of Hazardous Materials:** Section 8(b) of the Hazardous Materials Transportation Uniform Safety Act of 1990, as amended, directs the Secretary to adopt motor carrier safety permit regulations for motor carriers transporting Class A or B explosives, liquefied natural gases, hazardous materials extremely toxic upon inhalation, or highway route controlled radioactive materials. 49 U.S.C. §§ 5105, 5109. The deadline for final regulations was November 16, 1991.

  Status: An NPRM was issued on June 17, 1993, at 58 FR 33418 *et seq.* The topic was listed in the agency's semi-annual regulatory agenda for issuance of a supplemental NPRM (67 FR 74922, December 9, 2002). The FMCSA issued a supplemental notice of proposed rulemaking on August 19, 2003 (68 FR 49737). However, that proposed rule did not use the opportunity of instituting the permit system to propose new, additional hazmat types and quantities for inclusion under the § 5109 safety permitting system. A final rule was calendared by the FMCSA in its June 28, 2004, semi-annual regulatory agenda to be issued by June 2004. The final rule was issued on June 30, 2004 (69 FR 39350 *et seq.*).

  *In a judicial settlement agreement, FMCSA agreed to issue a final rule regarding permits for the transportation of hazardous materials under section 5109 no later than June 30, 2004.

INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991

- ***Minimum Training Requirements for Operators and for Training Instructors of Multiple Trailer Combination Vehicles:** The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Section 4007(b)(2) mandates that the Secretary shall initiate rulemaking later than 60 days following ISTEA enactment and shall issue a final regulation establishing

such standards no later than two years following enactment. Therefore, the latest date for compliance was December 18, 1993. An advance notice of proposed rulemaking (ANPRM) was issued at 58 FR 4638 *et seq.*, January 15, 1993. Although the FMCSA has repeatedly calendared this topic for action in its semi-annual regulatory agendas, none of the agency's self-imposed target dates has been met.

Status: The FMCSA December 9, 2002, semi-annual regulatory agenda listed this issue for proposed rulemaking in December 2003. 67 FR 74923. The FMCSA issued a proposed rule on August 12, 2003 (68 FR 47890 *et seq.*). In comments filed with the agency's docket on October 15, 2003, Advocates pointed out that the agency has substituted its discretion for clear legislative instruction from Congress by essentially mooting the mandatory action to institute LCV driver training by grandfathering 97 percent of current CDL holders with LCV endorsements for exclusion from any required advanced driver training. A final rule was issued on March 30, 2004, that excluded through grandfathering about 96 percent of all LCV drivers from having to receive any advanced training. 69 FR 16722 *et seq.*

*In a judicial settlement agreement, FMCSA agreed to issue a final rule regarding minimum training requirements for drivers of longer combination vehicles no later than March 30, 2004.

- ***Training for Entry-Level Drivers of Commercial Motor Vehicles:** ISTEA Section 4007(a) mandates that the Secretary report to Congress on the effectiveness of private sector entry level commercial vehicle driving training efforts no later than one year following enactment, that is, by December 18, 1993. The report was submitted to Congress date February 5, 1996. The provision also directs the Secretary to determine whether such training standards are needed for trucks greater than 10,000 pounds gross vehicle weight or for buses carrying eight passengers or more plus a driver. If the Secretary decides that such standards are not required, the Secretary shall submit a report to Congress not later than 25 months following enactment detailing the reasons why no standards are necessary, accompanied by a benefit-cost analysis. Since the Secretary did not file a report stating that such training standards are not necessary, the original compliance dates apply for a notice of proposed rulemaking (NPRM) by December 18, 1992, and for a final rule by December 18, 1993, which the FMCSA recognizes in its most recent semi-annual regulatory agenda entry (No. 2428, 66 FR 62001-62002, December 3, 2001. The agency initiated rulemaking with an ANPRM at 58 FR 33874 *et seq.*, June 21, 1993. Although the FMCSA has repeatedly promised specific target dates for completing this Congressional requirement, none of the self-imposed deadlines has been met.

  Status: The agency in its December 9, 2002, semi-annual regulatory agenda listed this issue for proposed rulemaking in December 2003. 67 FR 74923. The FMCSA issued a proposed rule for public comment on August 15, 2003 (68 FR 48863 *et seq.*), that clearly evades Congressional direction by avoiding the proposed adoption of any entry-level driving training in basic operational skills and safety. This proposal arguably violates Section 4007(a) of the ISTEA. A final rule was issued on May 21, 2004, which does not require entry-level drivers from receiving any basic knowledge and skills training on the operation of commercial motor vehicles. 69 FR 29384 *et seq.* Advocates and two other plaintiffs filed suit against the agency

at the start of 2005 seeking to overturn the final rule as arbitrary and capricious agency action. The Court of Appeals for the District of Columbia overturned the final rule and remanded it to the agency for further action on December 2, 2005. There is no entry in the April 24, 2006, FMCSA semi-annual regulatory agenda providing a calendar for reopening rulemaking to comport with the court's decision. Similarly, there is no listing for any regulatory action in the December 11, 2006 semi-annual regulatory agenda (71 FR 73584, 73635-73643). The agency apparently does not see any need to respond expeditiously to the court's remand to redo the rulemaking.

*In a judicial settlement agreement, FMCSA agreed to issue a final rule regarding minimum training standards for entry-level drivers of commercial motor vehicles no later than May 31, 2004.

HAZARDOUS MATERIALS TRANSPORTATION AUTHORIZATION ACT OF 1994

- ***Safety Performance History of New Drivers:** This action was originally mandated by Section 114 of the Hazardous Materials Transportation Authorization Act of 1994. It directs the Secretary to specify by January 1999 the minimum safety information that new or prospective employers must seek from former employers during the investigation of a driver's employment record. However, the agency has issued only a NPRM (61 FR 10548 *et seq.*, March 14, 1996) and Congress in the Transportation Equity Act for the 21st Century (TEA-21) decided in Section 4014 to give the provision a new statutory deadline of January 1999. Congress also modified the rulemaking charge to the Secretary to include protection for commercial driver privacy and to establish procedures for the review, correction, and rebuttal of inaccurate safety performance records of any commercial driver.

  Status: The FMCSA in the semi-annual regulatory agenda for December 3, 2001, promised a supplementary notice of proposed rulemaking in March 2002. However, that timetable was pushed back again to December 2002 for a supplemental NPRM. 67 FR 74918 (December 9, 2002). The FMCSA published a supplemental notice of proposed rulemaking on July 17, 2003 (68 FR 42339 *et seq.*). Advocates filed comments with the docket on September 2, 2003, that pointed out that the agency was failing to require that employers reveal employee hours of service violations. A final rule was issued on March 30, 2004. 69 FR 16684 *et seq.* This rule, however, may be further modified in accordance with a provision on safety performance screening enacted in SAFETEA-LU, Sec. 4117. *See*, the entry below on this regulatory topic in the section on motor carrier provisions enacted in SAFETEA-LU.

  *In a judicial settlement agreement, FMCSA agreed to issue a final rule regarding background information and safety performance history of commercial drivers no later than March 30, 2004.

- ***OVERDUE* - Railroad-Highway Grade Crossing Safety:** This rulemaking action was directed by Congress to be completed by February 26, 1995. The agency proposed that operators of commercial motor vehicles were to be prohibited from driving onto a railroad grade

crossing unless there also was sufficient space to drive completely through the crossing without stopping on the tracks.

Status: Although a notice of proposed rulemaking was issued in July 1998, no final rule was issued. The FMCSA in its December 3, 2001, semi-annual regulatory agenda promised a final rule to be issued by September 2002. 66 FR 62005. However, that deadline was pushed even further back to March 2003. 67 FR 33483, May 13, 2002. In the semi-annual regulatory agenda of December 9, 2002, a final rule was scheduled now for June 2003. 67 FR 74920. The semi-annual regulatory agenda of June 28, 2004, again pushed back the completion date for a final rule until April 2005. 69 FR 37844, 37910-37911. The semi-annual regulatory agenda for October 31, 2006, listed this required regulation as a "Next Action Undetermined," with no specific date for action. 70 FR 64940, 64995. FMCSA has now withdrawn this rulemaking proposal, 71 FR 25128, April 28, 2006, arguing that the proposed rule gave a misleading impression of the statutory mandate that the agency states it will correct by issuing a new, more clearly articulated proposal. A new proposed rule is now calendared for September 2007 in the December 11, 2006, semi-annual regulatory agenda (71 FR 73584, 73638). This topic is also listed as an entry That May Affect Small Entities when a Regulatory Flexibility Analysis is not Required, *id.* at 74349, and as an entry That May Affect Levels of Government, *id.* at 74360.

- ***OVERDUE* - Supporting Documents for Hours of Service for Commercial Drivers, Section 113:** Section 113 of the Hazardous Materials Authorization Act of 1994 specifies several actions to be completed by the Secretary, including a requirement that the Secretary prescribe regulations specifying the number, type, and frequency of supporting documents that must be retained by a motor carrier in order to permit verification of the accuracy of record of duty status maintained by each commercial driver and the length of time for which the supporting documents shall be retained which must be at least 6 months from the date of a document's receipt. The statutory deadline for issuing such regulations was February 26, 1996.

  Status: Although the agency opened rulemaking on April 20, 1998, at 63 FR 19457, and published a supplemental notice of proposed rulemaking on November 3, 2004, at 69 FR 63997, no final action has been taken on this regulatory topic. The agency missed the statutory deadline by 10 years. In the April 24, 2006, semi-annual regulatory agenda, FMCSA has calendared a final rule to be issued in July 2006. 71 FR 23012. FMCSA has again delayed issuance of a final rule in the December 11, 2006, semi-annual regulatory agenda (71 FR 73584, 73638-73639). The newly promised completion date is December 2006.

INTERSTATE COMMERCE COMMISSION TERMINATION ACT OF 1995

- **Motor Carrier Replacement Information and Registration System:** Section 103 of the Interstate Commerce Commission Termination Act of 1995 requires the Secretary to initiate a rulemaking to replace the current U.S. DOT motor carrier identification number, single state registration number, registration/licensing system, and financial responsibility system, with a single, on-line federal system. Congress directed in its enactment of a new 49 U.S.C. § 13908

that the agency shall conclude rulemaking under this section not later than 24 months after the effective date of this section, that is, by January 1, 1998. An ANPRM was issued at 61 FR 43816, August 26, 1996. The agency apparently considers its partial response to the issues mandated by Congress adopted by the FMCSA in a final rule of June 2, 2000, at 65 FR 35287 *et seq.*, despite the fact that the agency was two and one-half years late, as having satisfied the rulemaking calendar of Section 103 of the ICC Termination Act. The FMCSA, in its entry on this issue in the May 2001 semi-annual regulatory agenda (No. 2338 at 66 FR 25884) noted that the issue has now been combined with another ongoing rulemaking action (65 FR 70509 *et seq.*, November 24, 2000). Also, the agency characterizes the rulemaking as not having any statutory deadline.

Status: The FMCSA issued an interim final rule with an opportunity for public comment on November 24, 2000, at 65 FR 70509 *et seq.* In the December 3, 2001, semi-annual regulatory agenda, the FMCS listed March 2002 for issuing a notice of proposed rulemaking on this topic. 66 FR 62003. The agency then listed a proposed rule for June 2002 in its May 2002 semi-annual agenda. 67 FR 33481-33482, May 13, 2002. In its latest agenda, the FMCSA lists the issue as now scheduled for a proposed rule in February 2003. No rulemaking proposal has been issued as of January 2004. The June 28, 2004, semi-annual regulatory agenda listed a notice of proposed rulemaking to be published in November 2004. 69 FR 37906. A proposed rule was published for comment on May 19, 2005, 70 FR 28990 *et seq.* The last 2005 semi-annual regulatory agenda has an entry for this action without any indication of a timeframe for completion. 70 FR 64940, 64994, October 31, 2005. However, this statutory mandate has been updated and recharacterized by a new, detailed legislative provision in SAFETEA-LU (*q.v.*, below) with a new statutory deadline for completing rulemaking by August 6, 2006.

- ***DELAYED/INCOMPLETE*** **- Automated and Tamper-Proof Recording Devices:** Sec. 408 of the ICC Termination Act required the agency to issue an advance notice of proposed rulemaking that, among other topics, addressed the issue of commercial driver fatigue in relation to automated and on-board recording of driver hours of service. The FMCSA and its predecessor agency issued the advance notice on November 5, 1996 (61 FR 58752 *et seq.*), the proposed rule amending driver hours of service that included the proposed adoption of electronic on-board recording devices (EOBRs) on May 2, 2000 (65 FR 25540 *et seq.*), and a final rule that demurred on adopting EOBRs at that time on April 28, 2003 (68 FR 22456).

  Status: Because the U.S. Court of Appeals for D.C. vacated the 2003 final rule on July 16, 2004, and in *dicta* stressed that the agency had failed to address the EOBR issue as directed in the ICC Termination Act as required, the FMCSA issued an advance notice of proposed rulemaking on September 1, 2004 (69 FR 53386 *et seq.*). The October 31, 2005, semi-annual regulatory agenda indicated that a proposed rule on EOBRs would be issued by February 2006. 70 FR 64940, 64993. FMCSA did not meet this self-imposed deadline. The semi-annual regulatory agenda for April 24, 2006, at 71 FR 23010 indicated a proposed rule publication for June 2006. That date for a proposed rule was pushed back another 9 months to March 2007 in the December 11, 2006, semi-annual regulatory agenda (71 FR 973584, 73637). That proposed rule was finally published on January 18, 2007 (72 FR 2340 *et seq.*). The proposed rule

requires EOBRs only if a motor carrier undergoes two successive Compliance Reviews within a two-year period that show, in both instances, that the carrier had a 10 percent or greater violation rates. FMCSA projects that less than 1,000 motor carriers each year of over 700,000 companies currently registered with the agency will be required to install EOBRs, a figure that amounts to about 0.013 percent of interstate motor carriers. In addition, the proposal allows motor carriers required to use EOBRs to remove them after two years of use. The proposed rule has numerous, other major weaknesses.

- **General Jurisdiction Over Freight Forwarder Service:** This rulemaking is carried out in accordance with the extensive Congressional reworking of the FMCSA's jurisdictional responsibilities over all segments of the freight forwarding industry, as enacted in Section 103 of the ICC Termination Act of 1995. Despite a proposed rule in January 1997, the agency has taken no further action to date.

  Status: The FMCSA listed this rulemaking in its December 9, 2002, semi-annual regulatory agenda as "Next Action Undetermined." 67 FR 74924 *et seq.* The June 28, 2004, semi-annual regulatory agenda promised a final rule in June 2004. The semi-annual regulatory agenda published on October 31, 2005, reverted to listing this required regulatory action again as "Next Action Undetermined." 70 FR 64940, 64995. The semi-annual regulatory agenda for April 24, 2006, lists final action as "To Be Determined." 71 FR 23014. The December 11, 2006, semi-annual regulatory agenda now lists final regulatory action for March 2007 (71 FR 73584, 73638). This topic is also listed as an entry That May Affect Small Entities when a Regulatory Flexibility Analysis Is not Required, *id.* at 74349.

TRANSPORTATION EQUITY ACT FOR THE TWENTY-FIRST CENTURY (TEA-21)

- **Waivers, Exemptions, and Pilot Programs:** Section 4007 directs the Secretary not later than 180 days after enactment of TEA-21 (*i.e.*, by December 9, 1998) to issue regulations after notice and comment rulemaking which specify the procedures by which a person may request a regulatory exemption from the Federal Motor Carrier Safety Regulations. The FMCSA issued an interim final rule on December 8, 1998 (63 FR 67600 *et seq.*), with only an after-the-fact public comment period and a date of effectiveness simultaneous with publication of the interim rule. It also has proceeded with pilot program development and proposals without having adopted final procedures mandated by Congress for requesting regulatory exemptions.

  Status: The December 3, 2001, semi-annual regulatory agenda listed final regulatory action on this topic by December 2001. This deadline was extended to March 2003. 67 FR 33487-33488, May 13, 2002. The December 9, 2002, agenda listed final action for March 2003. The FMCSA issued a final rule on August 20, 2004, simply adopting the 1998 interim final rule. 69 FR 51589 *et seq.*

- *DELAYED/INCOMPLETE* - **Performance-Based CDL Testing:** Section 4019 of TEA-21 requires the Secretary to complete not later than one year following enactment of the bill (*i.e.*,

by June 9, 2000), a review of the procedures established and implemented by the states pursuant to federal law governing the commercial driver license (CDL) to determine if the current system for testing is an accurate measure of an applicant's knowledge and skills. The review is also required to identify methods of improving testing and licensing standards, including the benefits of a graduated licensing system. A Notice proposing an information collection survey was published in the Federal Register on July 19, 1999 (64 FR 38699).

Status: Although there was not even an entry for the legislatively mandated evaluation of the benefits of a graduated commercial driver licensing (GCDL) program in the agency's semi-annual regulatory agenda issued on December 9, 2002, FMCSA published a notice asking for comments on the value of a GCDL program on February 25, 2003. 68 FR 8798 *et. seq.* The semi-annual regulatory agenda published on April 24, 2006, has merged this topic with relevant provisions enacted in SAFETEA-LU. 71 FR 23011. *See*, below, the entry under SAFETEA-LU for Commercial Driver's License Testing and Learner's Permit Standards.

- ***DELAYED/INCOMPLETE*** **- Improved Flow of Driver History Pilot Program:** Section 4022 of TEA-21 directs the Secretary to carry out a pilot program with one or more states to improve the timely exchange of pertinent driver performance and safety records data among motor carriers. A central purpose of the pilot program is to determine the extent to which driver records, including fines, penalties, and failures to appear for trial, should be included as part of any driver information systems

  Status: Although there is no statutory deadline for this pilot program, the FMCSA since its inception has proposed discretionary pilot programs rather than acting expeditiously on pilot programs of strong Congressional interest expressed in authorizing legislation. There has been no proposed pilot program to carry out this Congressional directive. There have been no entries for this proposal in the agency's semi-annual regulatory agendas through December 11, 2006.

- **Improved Interstate School Bus Safety:** The Secretary is directed by Section 4024 to initiate rulemaking no later than six months after enactment of TEA-21 (*i.e.*, By January 7, 1999) to determine whether the Federal Motor Carrier Safety Standards should apply to interstate school transportation operations.

  Status: The agency issued an advance notice of proposed rulemaking on this topic on October 22, 2001, at 66 FR 53373 *et seq.*, initiating action on this topic more than two and one-half years after the Congressional deadline for a final regulation. The 2002 semi-annual regulatory agenda listed proposed rulemaking for October 2003. 67 FR 74918 *et seq.* (December 9, 2002). No proposed rule had been published as of January 2004. The FMCSA subsequently decided on March 24, 2004, to withdraw the advance notice of proposed rulemaking and close the docket, noting that it decided that no regulatory action was needed and that interstate school transportation operations by local government would remain exempt from the motor carrier safety regulations except for the CDL requirement. 69 FR 13803 *et seq.*

- ***DELAYED/INCOMPLETE*** **- DOT Implementation Plan:** The Secretary is directed in

Section 4026 to complete an assessment no later than 18 months (*i.e.*, by January 9, 2000) after TEA-21 enactment of the extent to which shippers, freight forwarders, brokers, consignees, and other members of the supply chain other than motor carriers themselves, abet violations of the Federal Motor Carrier Safety Standards. After completing this mandated assessment, the Secretary can submit a plan to Congress for implementing authority to subject these parts of the supply chain to the civil penalties provided by chapter 5 of Title 49 United States Code.

Status: Although the agency assessment was completed at the end of 1998 by means of a qualitative assessment of the problem through the use of focus groups (Report FHWA-MC-98-049; *A Qualitative Assessment of the Role of Shippers and Others in Driver Compliance With Federal Safety Regulations*, FHWA Tech Brief, December 1998), no quantitative, data-based assessment of the scope of problem has been accomplished, and the FMCSA has not sent a plan to Congress for extending the reach of civil penalty provisions to encompass the other parts of the motor carrier supply chain. According to FMCSA personnel, the agency will not perform a quantitative evaluation and it decided not to submit a plan to Congress to recommend subjecting other members of the supply chain to the civil penalties in federal law for violating the Federal Motor Carrier Safety Regulations. As a result, no semi-annual regulatory agenda contains an entry for this topic.

MOTOR CARRIER SAFETY IMPROVEMENT ACT OF 1999 (MCSIA)

- **Enforcement of Operating Authority Requirements, Section 205:** This provision on registration enforcement filled a major gap in FMCSA's enforcement authority by providing that, in addition to other penalties available under existing law, motor carriers that fail to register their operations as required by this section or that operate beyond the scope of their registrations may be subject to a series of legislatively prescribed penalties, including issuance of immediate Out-Of-Service Orders. The section also provides that any non-U.S. person operating a vehicle for which registration is required shall maintain evidence of proper registration in the motor vehicle when it is providing transportation. A central purpose of this legislative provision was to authorize the Secretary to take action against foreign domiciled motor carriers, such as Mexico-domiciled motor carriers, that are found to be operating either illegally in the U.S. or, in the case of the southern U.S. border, are operating commercial motor vehicles beyond the southern commercial zones without authorization to engage in transportation in the other portions of the border states or to conduct interstate operations.

  Status: FMCSA issued an interim final rule on August 28, 2002, that complied with the requirements of Section 205 and, in addition, made state enforcement of similar requirements to suspend operations of any motor carrier found to be operating without proper authority or to have exceeded the limits of its operating authority, a condition for receiving federal funds under the Motor Carrier Safety Assistance Program (MCSAP). 67 FR 55162 *et seq.* The agency has listed this regulatory topic for final action by June 2007 in the April 24, 2006, semi-annual regulatory agenda. It should be noted that the effective date for compliance with the terms of the interim final rule, September 27, 2002, delayed implementation of this major enforcement

tool for nearly 3 years after enactment of FMCSA's enabling legislation. FMCSA has now issued a final rule that adopts as final its interim regulation published in August 2002 (71 FR 50862 *et seq.*, Aug. 28, 2006). However, this action has not been listed in the December 11, 2006. semi-annual regulatory agenda as an entry That May Affect Levels of Government, 71 FR 73584, 74360.

- **New Motor Carrier Entrant Requirements, Section 210:** The Secretary is directed to require through regulation that each owner and each operator granted new operating authority shall undergo a safety review within the first 18 months after the owner or operator begins operations. This timeframe for evaluating the safety of new motor carriers is triggered by implementation of subsection (b) of this provision which directs the Secretary to initiate rulemaking to establish minimum requirements for applicant motor carriers, including foreign carriers, to ensure their knowledge of federal safety standards. The Secretary is also directed to consider requiring a safety proficiency examination for motor carriers applying for interstate operating authority. The new entrant program was also amended by Congress in the Fiscal Year 2002 Appropriations legislation for the U.S. Department of Transportation to include requirements for new Mexican motor carriers.

  Status: The FMCSA indicated in its December 3, 2001, semi-annual regulatory agenda that it would issue a rulemaking proposal in February 2002. 66 FR 62004. However, a notice of proposed rulemaking was supplanted on May 13, 2002, by an interim final rule with an after-the-fact comment period. See 67 FR 33489, May 13, 2002. The June 28, 2004, semi-annual regulatory agenda listed a notice of proposed rulemaking for January 2005. 69 FR 39707. This date has again been delayed in the semi-annual regulatory agenda of October 31, 2005, to January 2006. 70 FR 64940, 64992. The December 11, 2006, semi-annual regulatory agenda listed a proposed rule to be issued in December 2006. 71 FR 73584, 73635. This agenda also listed the topic as an entry That May Affect Small Entities when a Regulatory Flexibility Analysis Is not Required, *id.* at 74348.

  A proposed rule was published on December 21, 2006. 71 FR 76731 *et seq.* Although the proposal attempts to strengthen the new entrant program in some areas, the overall proposal fails to respond to the need to ensure that new entrant motor carriers are Safety Audited before they are awarded temporary registration and fails to conduct exist Compliance Reviews after the 18 months of temporary operation so that FMCSA begins the effort to stop adding even more unrated motor carriers to the enormous backlog of companies without safety fitness ratings. Pre-authorization safety audits and exit CRs with assigned safety fitness are, however, a current requirement for Mexico-domiciled motor carriers that was enacted several years ago by Congress.

- ***OVERDUE*** **- Certified Motor Carrier Safety Auditors, Section 211:** The Secretary is directed in Section 211 of the MCSIA to complete rulemaking by December 9, 2000, to improve training and to provide for the certification of motor carrier safety auditors, including private contractors, to conduct safety inspection audits and reviews. The rulemaking shall ensure that not later than one year after adoption of the new regulation, all safety inspection

audits or reviews shall be conducted by a certified motor carrier safety auditor or by a qualified federal or state employee. The Secretary may extend the deadline for a final regulation before December 9, 2000, by notifying Congress that the U.S. Department of Transportation requires up to a one-year delay, that is, until December 9, 2001, for completing the required rulemaking.

Status: The final rule has not been issued. As far as can be determined, no request for an extension was sent to Congress before December 9, 2000. The agency indicated in its December 3, 2001, semi-annual regulatory agenda that it intended to issue a notice of proposed rulemaking in February 2002. 66 FR 62004. However, that action was supplanted by an interim final rule with an after-the-fact comment period, issued on March 19, 2002. See 67 FR 33490, May 13, 2002. The effective date of the interim final rule was delayed until July 17, 2002, and the FMCSA initially listed final action for November 2003. 67 FR 74927-74928 (December 9, 2002). No final rule has been published as of December 2004. The June 28, 2004, semi-annual regulatory agenda calendared a final rule for May 2005. 69 FR 37912. However, that deadline was not met, and the semi-annual regulatory agenda of October 31, 2005, lists the topic for a proposed rule in May 2007. 70 FR 64958, 64996-64997. That target date has been repeated in the semi-annual regulatory agenda of April 24, 2006. 71 FR 23015. It is again the target date in the December 11, 2006, agenda (71 FR 73584, 73635-73636). This topic is also listed in the December 11, 2006, agenda as an entry That May Affect Small Entities when a Regulatory Flexibility Analysis is not Required, *id.* at 74348, and as an entry That May Affect Levels of Government, *id.* at 74360.

- **Commercial Van Operations Transporting Nine to Fifteen Passengers Across the U.S.-Mexico Border, Section 212:** Section 212 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA), authorizing the establishment of a new motor carrier safety agency, directs the Secretary to complete rulemaking determining the application of the Federal Motor Carrier Safety Standards to "camionetas" or compensated commercial vans transporting nine to 15 passengers across the U.S.-Mexico border and to other commercial vans transporting between 9 and 15 passengers which are deemed serious safety risks. A final rule was required by December 9, 2000.

  Status: The FMCSA published a notice of proposed rulemaking on August 2, 2001, and indicated that it will take final action on this proposal in July 2002. 66 FR 62008 (December 3, 2001). That deadline was moved up by one month in the May 2002 semi-annual regulatory agenda to June 2002. 67 FR 33488, May 13, 2002. According to the latest agenda of December 9, 2002, final action on this proposal was to have occurred by December 2002. 67 FR 74921. The FMCSA published a final rule on August 12, 2003 (68 FR 47860 *et seq.*). However, that final rule exempts numerous small commercial operations from regulation on the basis of the amount of mileage traveled and the failure of these commercial operations to ask for "direct compensation." Congress has countermanded that regulatory decision in Sec. 4136 of SAFETEA-LU by requiring the FMCSA to cover thousands of commercial van operations that were excluded by the final rule. (*See*, below, entry under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users.) FMCSA has set a new date for a final rule in the semi-annual regulatory agenda published December 11, 2006 (71 FR 73584,

73641).

- ***DELAYED/INCOMPLETE ACTION*** **- Medical Certificate, Section 215:** Section 215 directs the Secretary to conduct rulemaking to make the federal medical qualification part of the commercial driver license (CDL). The FMCSA initiated rulemaking on this effort to integrate the medical certificate for commercial drivers with the CDL in 1994 (ANPRM, 58 FR 36338, *et seq.*, July 15, 1994). A negotiated rulemaking was conducted by a chartered advisory committee in 1995.

  Status: The FMCSA stated in its December 3, 2001, semi-annual regulatory agenda entry no. 2429 that a proposed rule would be issued in March 2002. 66 FR 62002. However, that deadline was eliminated in the May 2002 semi-annual regulatory agenda in favor of a September 2002 date for proposed rulemaking. 67 FR 33481, May 13, 2002. This deadline has again been extended to March 2003 in the December 9, 2002, agenda. 67 FR 74917. As of December 2004, no rulemaking has been published by the agency. The agency promised a rulemaking proposal by December 2004 in the June 28, 2004, semi-annual regulatory agenda. 69 FR 37906. Following this, a proposed rule without a specific date was listed for action in the FMCSA portion of the October 31, 2005, semi-annual regulatory agenda, but no proposal has been issued as of June 2006. Congress directed in SAFETEA-LU that the integration of the CDL with the Medical Certificate be accomplished. See the entry below under SAFETEA-LU.

UNITING AND STRENGTHENING AMERICA BY PROVIDING APPROPRIATE TOOLS REQUIRED TO INTERCEPT AND OBSTRUCT TERRORISM (USA PATRIOT ACT) ACT OF 2001

- ***DELAYED/INCOMPLETE*** **- Limitations on the Issuance of Commercial Driver Licenses with a Hazardous Materials Endorsement:** The USA Patriot Act, enacted October 26, 2001, contains Section 1012 which prohibits each state from issuing any license to operate any motor vehicle transporting hazardous materials, as specifically defined in the Act, unless the Secretary of Transportation first determines that the license applicant does not pose a security risk warranting license denial based on a background records check conducted by the U.S. Attorney General consisting of an evaluation of any domestic and international criminal records and alien immigrant status.

  Status: FMCSA issued an interim final rule in conjunction with the Transportation Security Administration (TSA) without prior opportunity for comment on May 5, 2003, prohibiting the states from issuing, renewing, transferring, or upgrading a CDL with a hazardous materials endorsement unless the TSA has first conducted a background records check on each applicant and has determined that the applicant does not pose a security threat warranting denial of the hazmat endorsement. 68 FR 23844 *et seq.* Two subsequent actions were published in the Federal Register, the first on November 7, 2003, and the second on August 19, 2004, delaying the compliance dates for the states because of both federal and state burdens that could not be acquitted in accordance with the original deadlines. 68 FR 63030 *et seq.*; 69 FR 51391 *et seq.*

Following these delays, TSA and FMCSA simultaneously issued a second final interim regulation to implement Section 1012. 70 FR 22268 (April 29, 2005). However, that interim final rule has not been made effective nor has it yet been changed to a final rule. As a consequence, the April 24, 2006, semi-annual regulatory agenda lists final action "To Be Determined." 71 FR 23015. This deferral is repeated in the December 11, 2006, agenda (71 FR 73584, 73640-73641). This topic is also listed in the December 11, 2006, agenda as an entry That May Affect Small Entities when a Regulatory Flexibility Analysis Is not Required, *id.* at 74349, and as an entry That May Affect Levels of Government, *id.* at 74360.

DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATIONS ACT 2002

- **Penalties, Inspection, and Decal Display Requirements for Mexico-Domiciled Motor Carriers:** Section 350 of this Fiscal Year 2002 appropriations legislation, enacted on December 18, 2001 (Pub.L. 107-87, 115 Stat. 833), directs that all commercial motor vehicles operated by Mexico-domiciled motor carriers holding authority to operate beyond the southern commercial zones of the U.S. must display a Commercial Motor Vehicle Safety Alliance decal issued by a certified inspector.

  Status: FMCSA has taken no action on this issue for several years since enactment of the cited appropriations legislation because no new operating authority has been awarded to any Mexico-domiciled motor carrier to operate throughout the U.S. in interstate commerce, beyond the current southern border zones. The semi-annual regulatory agenda for April 24, 2006, lists this regulatory action for a proposed rule to be published in March 2007. 71 FR 23009. This projected deadline for action is repeated in the December 11, 2006, semi-annual regulatory agenda (71 FR 73584, 73636). This topic is also listed in the December 11, 2006, semi-annual regulatory agenda as an entry That May Affect Small Entities when a Regulatory Flexibility Analysis Is not Required, *id.* at 74349

- **Safety Monitoring System and Compliance Initiative for Mexico-Domiciled Motor Carriers Operating in the United States:** Section 350 of the Fiscal Year 2002 U.S. DOT appropriations legislation requires the Secretary to perform a full compliance review of any Mexico-domiciled motor carrier operating in the U.S. beyond the U.S. municipalities and commercial zones on the U.S.-Mexico border, to determine whether each motor carrier complies with the safety fitness procedures set for in Part 385 of Title 49, Code of Federal Regulations, and to award permanent operating authority to each motor carrier only after it has been assigned a Satisfactory safety rating. Congress set forth two limited exceptions from these requirements for Mexico-domiciled motor carriers with 3 or fewer commercial motor vehicles or for those motor carriers that did not undergo an initial on-site safety review prior to being awarded temporary operating authority. FMCSA has engaged in rulemaking on this and allied issues involving motor carrier suspension and revocation procedures, and on the criteria the agency would use in evaluating whether Mexico-domiciled motor carriers exercise basic safety management controls.

Status: FMCSA proposed a regulation on May 3, 2001, to comply with the statutory mandate, as well as to ventilate other potential actions for the agency to take in order to implement the force and effect of the Congressional requirements. 66 FR 22415 *et seq.* An interim final rule was issued on March 19, 2002. 67 FR 12758 *et seq.* No further regulatory action has been taken to date to move the interim final rule to a completed final rule because, currently, no Mexico-domiciled motor carriers are being vetted for U.S. interstate operations on the basis of applications received to date by the agency. This is due to the fact that a final administrative decision to open the southern border to commercial traffic beyond the existing commercial zones has been rendered. As a result, FMCSA has designated any final action on this uncompleted issue as "To Be Determined" in the April 24, 2006, semi-annual regulatory agenda. 71 FR 23015. This deferral is repeated in the December 11, 2006, agenda (71 FR 73584, 73640). This topic is also listed at *id.* 74360 as an entry That May Affect Small Entities when a Regulatory Flexibility Analysis Is not Required; as an entry That May Affect Levels of Government; and as an entry That May Have Federalism Implications, *id.* at 74390.

SAFE, ACCOUNTABLE, FLEXIBLE, EFFICIENT TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS 2005 (SAFETEA-LU)

- **Qualifications of Commercial Drivers – Diabetes Standard:** Section 4129 of SAFETEA-LU directs the Secretary to begin revising the final rule on the medical standard for drivers with insulin-treated diabetes, published in the Federal Register on September 3, 2003, not later than 90 days after enactment of SAFETEA-LU (by November 8, 2005) to allow insulin-treated commercial drivers with diabetes to treat their diabetes and to operate commercial motor vehicles in interstate commerce. The final rule shall provide for individual medical assessment of drivers who are otherwise qualified under the Federal Motor Carrier Safety Regulations. The amended final rule is also directed to be found consistent with the statutory criteria set forth in Section 4018 of TEA-21. The adoption of a final rule pursuant to Section 4129 of SAFETEA-LU shall conclude the rulemaking process. Section 4129 also provides that the Secretary may not require individuals with insulin-treated diabetes applying for an exemption to operate commercial motor vehicles in interstate commerce to have prior experience operating such vehicles while treating their diabetes with insulin. Section 4129 further provides that the Secretary shall require exemption applicants with insulin-treated diabetes to have a minimum period of insulin use to demonstrate stable control of their diabetes, consistent with findings previously reported in a July 2000 medical panel reports. For exemption applicants newly diagnosed with Type I diabetes, the minimum period of insulin use may not exceed 2 months unless otherwise indicated by a treating physician; for exemption applicants diagnosed with Type II diabetes, the minimum period of insulin use shall not exceed 1 month unless other indicated by a treating physician. Furthermore, the Secretary shall not hold insulin-treated drivers with diabetes to a higher standard of physical qualification to operate commercial motor vehicles in interstate commerce except to the extent that limited operating, monitoring, and medical requirements are deemed medically necessary under regulations issued by the Secretary.

Status: There is no evidence that FMCSA began revising the existing regulation by November 8, 2006, governing commercial motor vehicle operation by insulin-treated drivers with diabetes. The entry for this issue in the April 24, 2006, semi-annual regulatory agenda (71 FR 23008) indicates that an advance notice of proposed rulemaking (ANPRM) was published in the Federal Register on March 17, 2006 (71 FR 13801 *et seq.*). However, ANPRMs under prevailing interpretations of the Administrative Procedure Act are not regarded as initiating rulemaking, which is begun only with the publication of a notice of proposed rulemaking for public comment or, if permitted by law, the issuance of a final regulation. No proposed rule has been issued as of June 2006. In the semi-annual regulatory agenda of April 24, 2006, FMCSA characterizes this regulatory action as having no legal deadline. The agency has deferred action on this topic in the December 11, 2006, semi-annual regulatory agenda, listing it as Next Action Undetermined (71 FR 73584, 73641). This agenda also lists the topic as an entry That May Affect Small Entities when a Regulatory Flexibility Analysis Is not Required, *id.* at 74349.

- **Inspection, Repair, and Maintenance of Intermodal Container Chassis (Roadability):** Section 4118 of SAFETEA-LU directs the Secretary to issue final regulations, after an opportunity for notice and comment, no later than 1 year after enactment (by August 11, 2006), that establishes a detailed program to ensure that intermodal equipment used to transport intermodal containers is safe and systematically maintained. The provision also contains other numerous, itemized requirements, including display of an USDOT identification number on each chassis offered for transportation and adoption of effective response mechanisms for driver and motor carrier complaints about intermodal container chassis condition.

  Status: The semi-annual regulatory agenda for April 24, 2006, acknowledges the statutory mandate and specific deadline that must be met by FMCSA. 71 FR 23010. However, the agency states that a notice of proposed rulemaking will be issued in June 2006. Considering the fact that the agency, under prevailing U.S. DOT rulemaking requirements, has designated the rulemaking as "significant," it will be difficult for FMCSA to issue a final regulation by August 11, 2006. In fact, the agency did not meet this statutory deadline. The December 11, 2006, semi-annual regulatory agenda lists final action for December 2006 (71 FR 73584, 73636-73637).

- **Medical Program – National Registry of Certified Medical Examiners:** Section 4116 of SAFETEA-LU directs the Secretary to establish a medical program that includes action by FMCSA to establish and maintain a current national registry of medical examiners who are qualified to perform commercial driver physical examinations and issue valid medical certificates. Medical examiners must be trained in physical and medical examination standards. The provision also directs that any medical examiner failing to meet or maintain qualifications established by the Secretary or otherwise does not meet legislated or regulatory requirements shall be removed from the national registry and allows participation of medical examiners in the national registry to be voluntary if the Secretary determines that only voluntary participation will enhance the safety of commercial drivers. There are several other, specific duties set forth in the provision for medical examiners to carry out, including requirements that medical

examiners electronically transmit to FMCSA the names of drivers with a numerical identifier for each driver that is examined and that they electronically transmit the medical certificate to the appropriate state for each CDL-holder operating in interstate commerce. The Secretary is also directed to conduct a periodic review of a representative sample of medical examination reports for errors, omissions, or indications of improper certification.

Status: The semi-annual regulatory agenda for April 24, 2006, indicates that there is no statutory deadline for adopting the national registry. 71 FR 23010. FMCSA indicates that a proposed rule is planned for publication in November 2006. Other aspects of the medical program, including criteria for selection of the members of the medical review board and a Chief Medical Examiner required by the provision to be established by the Secretary, will apparently not be ventilated through the Federal Register for public comment. The December 11, 2006, semi-annual regulatory agenda lists the Registry at 71 FR 73584, 73637 and refers to another section of the agenda at 74348 that lists the topic as an Entry That May Affect Small Entities when a Regulatory Flexibility Analysis Is not Required.

- ***OVERDUE:*** **Medical Certification Requirements as part of the Commercial Driver's License:** Section 4123 of SAFETEA-LU addresses modernization of the Commercial Driver License Information System (CDLIS) (*see*, below, the entry "Commercial Driver's License Information System (CDLIS)" under the SAFETEA-LU heading) and directs FMCSA to publish not later than 120 days following SAFETEA-LU enactment a comprehensive plan that includes integration of the CDL with the commercial driver medical certificate. However, the entry in the April 24, 2006, semi-annual regulatory agenda does not cite the SAFETEA-LU provision or the requirement that the Secretary publish a plan that includes medical certificate-CDL integration by early December 2006. 71 FR 23008. That entry indicates a proposed rule for the integration effort to be published in July 2006. FMCSA also asserts in this entry that there is no legal deadline for integrating the two documents.

  Status: The December 11, 2006, semi-annual regulatory agenda provided no new information or timeline for action on this topic. The entry at 71 FR 73584, 73635 cites two separate entries for this topic, the first at *id.* at 74348 which lists it as an Entry Which May Affect Small Entities when a Regulatory Flexibility Analysis Is not Required, and the second at *id.* at 74360 which lists it as an Entry That May Affect Government Levels.

  A proposed rule was finally published on November 16, 2006, at 71 FR 66723 *et seq.* Although FMCSA proposes the merger of the interstate commercial driver medical fitness certificate with the CDL so that drivers carry and present only one document, the agency failed to propose any oversight system at the state or federal levels to stop the widespread, persistent use of invalid medical certificates by many thousands of commercial drivers. FMCSA acknowledges the chronic problem of medically unqualified drivers operating trucks and buses in interstate commerce, but the agency's proposal will do almost nothing to stop the continued use of invalid or forged medical certificates. FMCSA's failure to propose a vigorous system of state and federal oversight to detect the use of fraudulent medical certificates continues its failure to respond to several recommendations issued by the National Transportation Safety Board urging

FMCSA to prevent medically unqualified commercial drivers from operating trucks and buses in interstate commerce. In addition, the agency completely ignores the continuing problem of false medical certificates being used by non-CDL interstate commercial drivers operating trucks less than 26,000 pounds gross vehicle weight rating.

- ***DELAYED/INCOMPLETE*** **- Revocation of Operating Authority:** Section 4104 of SAFETEA-LU provides the Secretary with the authority to suspend the registration of a motor carrier, freight forwarder, or broker for failure to comply with regulatory requirements governing these members of the supply chain or for violating any order or regulation of the Secretary issued pursuant to those regulations. The Secretary is also mandated to revoke the registration of a motor carrier that has been prohibited from operating in interstate commerce for failure to comply with safety fitness requirements. The provision also specifies that the Secretary may suspend or revoke registration only after notice of the suspension or revocation is provided to the registrant. Further, a suspension remains in effect until a registrant complies with applicable requirements or until the Secretary revokes the suspension.

  Status: There is no statutory deadline for the Secretary to observe for implementing the provision. FMCSA indicates in the semi-annual agenda for April 24, 2006, that a proposed rule will not be issued until February 2007. That decision is superseded in the December 11, 2006, semi-annual regulatory agenda which lists termination of planned rulemaking on August 15, 2006, and a statement that the issues of the rulemaking area will be addressed in other rulemakings. 71 FR 73584, 73643. This topic is also listed in the December 11, 2006, agenda as an entry That May Affect Levels of Government, *id.* at 74360.

- ***OVERDUE*** **- Commercial Driver's License Testing and Learner's Permit Standards:** This rulemaking action integrates the prior statutory requirement of Section 4019 of TEA-21 for FMCSA to evaluate revisions to the CDL knowledge and skills test with the mandate to the Secretary to promulgate new minimum Federal standards for the states for issuing Commercial Learner Permits (CLP) pursuant to the requirements of Section 4122 of SAFETEA-LU. That provision also requires each CLP applicant to pass a written test that complies with minimum standards prescribed by the Secretary that are indexed to the type of commercial motor vehicle that the individual would operate if granted a CLP.

  Status: To date, FMCSA has taken no action to propose a regulation revising CDL knowledge and skills testing requirements for use by the states, pursuant to the requirement in TEA-21 that such a regulation be issued by June 9, 2000. FMCSA, as indicated above, has merged unfinished action on this TEA-21 requirement with the CLP action mandated by SAFETEA-LU. However, Congress in enacting Section 4121 of SAFETEA-LU did not delete the date certain deadline for regulatory action enacted in TEA-21. FMCSA states in its April 24, 2006, semi-annual regulatory agenda that this combined regulatory action on the CDL and CSP issues will be ventilated through a proposed rule in March 2007. 71 FR 23011. That entry also states that there is no legal deadline for agency action. March 2007 is restated as the target date for a proposed rule in the December 11, 2006, semi-annual regulatory agenda. 71 FR 73584, 73637-73638. The topic is also listed *id.* at 74360 as an entry That May Affect Levels of Government,

and *id.* at 74390 as an entry That May Have Federalism Implications.

- ***OVERDUE*** **- Unified Registration Act of 2005:** Congress regarded motor carrier registration and fees to be issues that required extensive legislative direction in SAFETEA-LU. Accordingly, the Act devotes an entire Subtitle C of Title IV, the Unified Carrier Registration Act of 2005. Congress had numerous goals in mind in this detailed direction to the Secretary, including the replacement of three concurrent identification and registration systems with a single, online Federal unified registration system that would serve as a depository and clearinghouse of information on and the identification of brokers, freight forwarders, and motor carriers required to register with the U.S. DOT. A central target of the legislation was to create a timely, rapidly updated, centralized, unitary system of registration to capture electronically all required information pursuant to statute and regulation for all members of the freight supply chain under the jurisdiction of FMCSA. Also, for the first time, exempt and private motor carriers would be registered with the agency. Section 4304 of the Act requires final regulations on the electronic registry to be issued not later than 1 year after enactment, by August 10, 2006, following an opportunity for public notice and comment, and for implementation of the Unified Carrier Registration Agreement by January 2007.

  Status: Although FHWA, FMCSA's predecessor agency, conducted preliminary rulemaking in the mid-1990s pursuant to the Interstate Commerce Commission Termination Act of 1995 (ICCTA) and failed to meet the statutory deadline prescribed by Congress in that legislation, SAFETEA-LU has revised and extended the earlier statutory direction with much greater specificity and with greater comprehensiveness. *See*, above, the entry under the ICCTA, "Motor Carrier Information and Registration Replacement System." FMCSA plans to respond to the new requirement to reform, integrate, and place online a Unified Registration System by issuing a supplemental notice of proposed rulemaking in June 2007. 71 FR 23013 (April 24, 2006). Previously, FMCSA had issued a notice of proposed rulemaking on May 19, 2005 (70 FR 28990 *et seq.*). This topic has a date certain deadline for completion with final regulations imposed by Congress of August 10, 2006, so it is apparent that the agency is prepared to flout the legislated deadline by at least a year. The new Unified Carrier Registration Board in its first official act in June 2006 unanimously approved a resolution seeking a legislated delay in implementing the Unified Carrier Registration Agreement until January 2008. The December 11, 2006, semi-annual regulatory agenda lists this action with a reference to the section entitled Index to Entries That May Affect Government Levels. 71 FR 73584, 73635, 74360. No new information about action on the Unified Registration System is provided in the December 11, 2006, agenda.

- **Miscellaneous Regulatory Actions Mandated by SAFETEA-LU:** Numerous provisions in SAFETEA-LU amend existing statutory provisions in federal motor carrier and hazardous materials transportation law for which FMCSA has already issued implementing regulations. In each instance, the Secretary will have to conform these regulations to the legislative revisions enacted by Congress. However, none of these provisions requires FMCSA to conduct notice and comment rulemaking. Accordingly, FMCSA in its April 24, 2007, semi-annual regulatory agenda provides notification that the agency will adopt revised, implementing regulations to

conform to the amended provisions in SAFETEA-LU. An omnibus final rule will amend regulations related to civil and criminal penalties for violations of Out-Of-Service orders; civil penalties for motor carriers, freight forwarders, and brokers that deny FMCSA enforcement personnel access to their records and their facilities; hours of service exemptions for operators of ground water well drilling rigs, vehicles transporting agricultural commodities and farm supplies, utility service vehicles, vehicles providing transportation of passengers and property to movie production sites, and operators of vehicles transporting grapes west of I-81 in New York state; relief from Pts. 390 – 300 of the federal motor carrier safety regulations for drivers of vehicles used primarily in the transportation of propane winter heating fuel or drivers of vehicles used to respond to a pipeline emergency; and civil penalties for violations of the hazardous materials transportation regulations.

Status: FMCSA's semi-annual regulatory agenda for April 24, 2006, indicates that a single final rule amending all of these specified implementing regulations will be issued in March 2007. 71 FR 23013. That target date has now been advanced by one month to February 2007 in the December 11, 2006, semi-annual regulatory agenda. 71 FR 73584, 73639. The December 11, 2006, agenda also lists this topic as an entry That May Affect Small Entities when a Regulatory Flexibility Analysis Is not Required, *id.* at 74349.

- ***DELAYED/INCOMPLETE*** **- Interstate Van Operations (Camionetas):** For previous regulatory action on this topic until it was modified by Section 4136 of SAFETEA-LU, *see*, above, "Commercial Van Operations Carrying Nine to Fifteen Passengers Across the U.S. – Mexico Border," under the Motor Carrier Safety Improvement Act of 1999. Because FMCSA in previous regulatory action attempted to reduce the number of vans subject to the Federal Motor Carrier Safety Regulations (FMCSR) by a variety of measures, including limiting the subject vans by the distance traveled in for-hire passenger operations, Congress in Section 4136 directed that the FMCSR be amended so that the relevant safety requirements applied to these vans regardless of the amount of distance traveled.

  Status: FMCSA has indicated in the April 24, 2006, semi-annual regulatory agenda that a final rule is planned for publication in December 2007. This allows the current rule to remain in place reducing the scope of for-hire van operations subject to the FMCSR to less than mandated by this provision in SAFETEA-LU for nearly two and one-half years after the enactment of SAFETEA-LU. That delayed response to a statutory mandate to revise the initial final rule has now been deferred further in the December 11, 2006, semi-annual regulatory agenda to Next Action Undetermined. 71 FR 73584, 73641-73642.

- ***OVERDUE*** **- Pattern of Safety Violations by Motor Carrier Management:** Section 4113 directs the Secretary to suspend, amend, or revoke any part of a motor carrier's interstate registration if the Secretary finds that an officer of a motor carrier is engaging in or has engaged in a pattern or practice of avoiding compliance, or of masking or otherwise concealing compliance, with regulations governing commercial motor vehicle safety. The provision explicitly directs the Secretary to establish implementing regulations for this provision "not later than 1 year after the date of enactment . . ."

Status: Despite clear legislative instruction to the Secretary in Section 4113 to issue implementing regulations by August 10, 2006, FMCSA lists this regulatory topic in the April 24, 2006, semi-annual regulatory agenda as having no legal deadline. 71 FR 23016. Moreover, the agency indicates that a proposed rule will not be issued until September 2007, over 2 years after the enactment of SAFETEA-LU and more than 1 year after expiration of the statutory deadline established in Section 4113. FMCSA continues to flout a deadline for completed rulemaking in the December 11, 2006, semi-annual regulatory agenda which announces termination of planned rulemaking with a statement of prospective rulemaking on the issue, but without a dated stated for action. 71 FR 73584, 73643.

- **Substance Abuse Professionals:** Section 4148 of SAFETEA-LU directs the Secretary to conduct rulemaking to permit any state licensed or certified marriage and family therapist to act as a substance abuse professional.

  Status: No Federal Register notice initiating public rulemaking has yet been issued by FMCSA and the topic is not listed in the December 11, 2006, semi-annual regulatory agenda.

- **Intrastate Operations of Interstate Motor Carriers:** Section 4114 of SAFETEA-LU mandates the Secretary to determine owner or operator safety fitness for operating a commercial motor vehicle by using, among other indicia, the accident record of the owner or operator in interstate commerce and the accident and safety inspection records of the owner or operator in operations that affect interstate commerce. The mandate includes any owner or operator conducting motor carrier operations in Mexico or Canada if that owner or operator also conducts operations in the U.S. The Secretary is also directed to update safety fitness determinations using these additional safety indicators. Further, the Secretary is directed in the provision to prohibit operations that affect interstate commerce until the Secretary determines that each owner or operator is fit to do so. Section 4114 also specifies that if any state receiving MCSAP assistance finds that any motor carrier owner or operator with its principal place of business in that state is unfit to operate intrastate under all applicable safety fitness standards, including those required to be used by this provision, the Secretary shall not allow the owner or operator to conduct operations in interstate commerce until that state determines that the owner or operator is fit.

  Status: FMCSA in the April 24, 2006, semi-annual regulatory agenda mischaracterizes this provision as simply **allowing** the agency to use intrastate as well as interstate crash and safety data to judge the fitness of any motor carrier owner or operator, when, in fact, the provision mandates that using intrastate safety information **shall** be a condition for interstate operating authorization and, moreover, that the Secretary does not have the authority to allow interstate operations if any state has found the owner or operator not be fit for intrastate operations. 71 FR 23017. Although the Section 4114 does not explicitly mandate rulemaking to implement these additional requirements and prohibitions, FMCSA is correct that the only effective way to adopt these new requirements is through a final rule implementing them. However, the agency is delaying any calendared action to raise the quality of safety fitness determinations based on

additional crash data and intrastate safety fitness determinations by indicating in the cited semi-annual regulatory agenda that there is currently no date to take regulatory action on this legislative topic. The December 11, 2006, semi-annual regulatory agenda lists the topic as Next Action Undetermined (71 FR 93584, 73641-73642).

- **Commercial Driver License (CDL) Standards – School Bus Endorsement:** Section 4140 of SAFETEA-LU mandates the Secretary to recognize any driver who passes a test approved by FMCSA as having fulfilled the knowledge test requirement for a special, additional school bus CDL endorsement. The provision also specifies that 49 CFR § 383.123 shall not be in effect during the period beginning on the date of enactment of SAFETEA-LU (August 10, 2005) and ending on September 30, 200.

  Status: FMCSA issued an interim final rule implementing this provision on September 28, 2005. 70 FR 56589 *et seq.* The interim regulation also extended the compliance date to permit states an additional year to administer knowledge and skills tests to all school bus drivers, and extended the expiration date for allowing states to waive the driving skills test for an additional year. The action with regard to skills testing was discretionary and is not in response to the specific requirements of Section 4140. Subsequently, FMCSA issued a final rule on January 18, 2006. 71 FR 2897 *et seq.*

- **State Laws Relating to Vehicle Towing:** Section 4105 of SAFETEA-LU amends 49 U.S.C. § 4105 by adding new language regarding state legal authority to require that, in the case of a motor vehicle to be towed from private property without the consent of the owner or operator of the vehicle, the person towing the vehicle have prior written authorization from the property owner or lessee or that such owner or lessee be present at the time the vehicle is towed from the property. This provision also mandates the Secretary to conduct a study on predatory tow truck operations and to transmit the study together with recommendations on solutions to predatory towing to Congress not later than August 10, 2006.

  Status: There is no indication in any FMCSA official publication, including the semi-annual regulatory agendas, that the study is underway or that it will be completed and delivered by the mandated deadline.

- **Data Quality Improvement:** Section 4108 of SAFETEA-LU mandates the Secretary to submit to Congress a report on the status of the safety fitness rating system of motor carriers not later than 1 year following enactment, that is, by August 10, 2006.

  Status: There is no official, published information about the status of the study. It is not mentioned in the agency's recent Fiscal Year 2007 appropriations request, although there is considerable narrative concerning the need for several areas of data quality improvement, nor is it mentioned in connection with FMCSA's 2006 Federal Register notice asking for comments on areas of possible revision for the Safety Status Measurement System (SafeStat). *See,* 71 FR 26170 *et seq.*, May 3, 2006.

- ***OVERDUE*** **- Commercial Driver's License Information System (CDLIS) Modernization:** Section 4123 of SAFETEA-LU directs the Secretary to develop and publish a comprehensive national plan to modernize the CDLIS (CDLIS Plan) in several specific ways, not later than 120 days after enactment, that is, by December 8, 2005. Section 4123 further provides that a baseline audit of the revised CDLIS shall be carried out in consultation with the Inspection General of the U.S. DOT not later than 1 year after the date of enactment of SAFETEA-LU.

  Status: The CDLIS Plan was not published in the Federal Register until May 2, 2006, almost 6 months later than the statutorily mandated deadline. *See*, 71 FR 25885 *et seq.*, May 2, 2006. It is unknown to what extent preparations are being made for the baseline audit of CDLIS or whether appropriate consultations have been conducted with the U.S. DOT Office of the Inspector General. The failure to address the overhaul of CDLIS in a timely manner undermines FMCSA's effort to ensure accurate data entry and retrieval for the integration of the CDL with the medical certificate that the agency has addressed in a proposed rule issued on November 16, 2006 (71 FR 66723 *et seq.*).

- **Safety Data Improvement Program:** Section 4128 of SAFETEA-LU provides the Secretary with the authority to make grants to the states for projects and activities that improve the accuracy, timeliness, and completeness of commercial motor vehicle safety data reported to the Secretary on the basis of criteria determined by the Secretary that are consistent with certain indicia stated in the provision. The provision also directs the Secretary to transmit to Congress not later than 2 years after enactment and biennially thereafter a report on the activities and results of the program together with any recommendations.

  Status: The first report under Section 4128 is due no later than August 8, 2007.

- **CDL Task Force:** Section 4135 of SAFETEA-LU directs the Secretary to convene a task force to study and address current impediments and foreseeable challenges to the CDL program's effectiveness, and to select measures needed to realize the full safety potential of the program. Specific areas of concern are listed in the provision. The provision also directs that the Secretary, not later than 2 years after enactment, that is, by August 10, 2007, shall complete a report of the task force's findings and recommendations for legislative, regulatory, and enforcements reforms to improved the CDL program and transmit it to Congress.

  Status: There is no status information available from publicly available sources on whether the task force has been convened or what progress, if any, has been made towards evaluating any needed changes to the CDL program that would be considered for the report to Congress required by August 10, 2007.

- **Foreign Commercial Motor Vehicles:** Section 4139 of SAFETEA-LU directs the Secretary to conduct outreach and training to state personnel engaged in enforcement of the Federal Motor Carrier Safety Regulations not later than 180 days after enactment, that is, by January 8, 2006. The provision also mandates the Secretary to conduct a review of the extent to which Canadian and Mexican commercial motor vehicles transporting both freight and passengers that operate in

the U.S. or are expected to operate in the U.S., comply with federal motor vehicle safety standards. The Secretary is also directed to submit a report to Congress not later than 1 year after enactment containing the findings and conclusions of the review. Further, the U.S. DOT Inspector General is directed to provide comments and observations on the scope and methodology of the Secretary's review not later than 4 months after the date on which the report is submitted to Congress.

Status: There is no information publicly available on the status of the mandated review or whether FMCSA will comply with the August 10, 2006, legislated deadline for submitting a completed report to Congress.

- **Motor Carrier Safety Advisory Committee:** Section 4144 directs the Secretary to establish a motor carrier safety advisory committee in FMCSA to provide advice and recommendations to the Administrator about motor carrier safety programs and regulations. The provision specifies the membership composition and size of the committee. The provision also mandates termination of the committee by September 30, 2010.

  Status: FMCSA has published a notice requesting nominations for seats on the proposed motor carrier safety advisory committee. 71 FR 67200-67201 (November 20, 2006).

OTHER RULEMAKING ACTIONS

- **Application by Mexico-Domiciled Motor Carriers to Operate Beyond United States Municipalities and Commercial Zones at the United States – Mexico Border:** Although not specifically mandated by Section 350 of the Fiscal Year 2002 appropriations legislation for the U.S. DOT, this is a companion rulemaking action being conducted by FMCSA in conjunction with the mandated actions on instituting a safety monitoring and safety regulation compliance system for Mexico-domiciled motor carriers (*see*, above, the relevant entry under U.S. Department of Transportation and Related Agencies Appropriations 2002).

  Status: FMCSA began rulemaking on May 3, 2001, to propose implementing regulations intend to govern applications by Mexico-domiciled motor carriers to conduct U.S. interstate operations. 66 FR 22371 *et seq.* The rulemaking proposal added new requirements for information to be submitted by applicant motor carriers on business operations and operating practices. An interim final rule was published on March 19, 2002. 67 FR 12702 *et seq.* Litigation against the agency on environmental grounds and the continuing prohibition on opening the border to operations beyond the commercial zones has resulted in a hiatus in rulemaking action on this topic. Accordingly, the semi-annual regulatory agenda for April 24, 2006, lists final action on this rulemaking issue as "To Be Determined." 71 FR 23014. That deferral is restated in the December 11, 2006, semi-annual regulatory agenda (71 FR 73584, 73640). This topic is also listed in the December 11, 2006, agenda as an entry That May Affect Small Entities when a Regulatory Flexibility Analysis Is not Required, *id.* at 74349.

- **North American Uniform Out-Of-Service Criteria:** First issued more than 3 years ago, this advance notice of proposed rulemaking considered the alternative of making the Out-Of-Service (OOS) Criteria part of the actual corpus of FMCSA regulations included in the Code of Federal Regulations. The OOS criteria are used to determine whether a driver or commercial vehicle should be placed OOS for equipment or operator safety violations. Currently, the OOS criteria are more lenient than the actual Federal Motor Carrier Safety Regulations and permit many prima facie disqualifying violations to be recorded without preventing a motor carrier from continuing in service.

  Status: The entry no. 2445 in the December 3, 2001, FMCSA semi-annual regulatory agenda stated that the agency intends to terminate the rulemaking in December 2001. 66 FR 62006-62007. The semi-annual regulatory agenda of May 13, 2002 stated that termination would occur by June 2002. 67 FR 33487. The December 9, 2002, agenda listed withdrawal in March 2003. That withdrawal was published on July 24, 2003 (68 FR 43893 *et seq.*).

- ***DELAYED/INCOMPLETE*** **- Safety Fitness Procedures:** An advance notice of proposed rulemaking was issued by the predecessor agency of the FMCSA several years ago (July 20, 1998, 63 FR 38788 *et seq.*) to consider revision of the safety fitness rating system to make it more performance oriented while increasing the usefulness of the system for the public, shippers, and insurers in determining current motor carrier company safety quality.

  Status: No further action has occurred. The FMCSA indicated in its December 3, 2001, semi-annual regulatory agenda that it intended to issue a proposed rule in September 2002. 66 FR 62003. However, the agenda of May 13, 2002, deferred publication of a proposed rule until March 2003. 67 FR 33482. That date was not met and the semi-annual regulatory agenda (December 9, 2002) listed a NPRM for September 2003. 67 FR 74918. The rulemaking action has now been changed in the June 28, 2004, semi-annual regulatory agenda to a second advance notice of proposed rulemaking to have been issued by September 2004, which the FMCSA characterizes as a reissuance of the 1998 advance notice. 69 FR 37905. FMCSA stated in its October 2005 semi-annual regulatory agenda that the issues for this rulemaking "have not been sufficiently developed" and is withdrawing rulemaking and will reconsider the issue pending completion of its Comprehensive Safety Analysis 2010. 70 FR 64940, 64991 (October 31, 2005). The agency repeats this withdrawal and its rationale in the April 24, 2006, semi-annual regulatory agenda. 71 FR 23017. FMCSA has started a new initiative to revise the safety fitness process that is part of its Comprehensive Safety Analysis 2010 Initiative through a notice published in the Federal Register on October 17, 2006 (71 FR 61131 *et seq.*).

- **Rules of Practice for Motor Carrier Proceedings, Investigations, Disqualifications, and Penalties:** The FMCSA's predecessor agency issued a proposed rule in April 1996 to amend its rules of practice for conducting administrative proceedings and to improve the use of the agency's investigative authority. The purpose of the amendments is to enhance due process and expedite administrative actions.

  Status: No action was taken for 5 years following the closing of a supplementary notice of

proposed rulemaking in November 1996. The FMCSA stated in its December 3, 2001, semi-annual regulatory agenda that it intended to issue a final regulatory decision on this rulemaking in December 2001. 66 FR 62005. However, that deadline was eliminated in favor of opening rulemaking again in March 2003. 67 FR 33482, May 13, 2002. The March 2003 date was pushed back further to November 2003 in the late 2002 agenda. 67 FR 74924 (December 9, 2002). The June 28, 2004, semi-annual regulatory agenda calendared a final rule for January 2005. 69 FR 37910. The final rule was published on May 18, 2005, at 70 FR 28467.

- ***DELAYED/INCOMPLETE*** **- Commercial Driver Qualifications - English Language Requirement:** The FMCSA's predecessor agency opened rulemaking in August 1997 to determine the precise nature of the requirement that commercial drivers have sufficient functional speaking and reading comprehension of the English language so they can understand the Federal Motor Carrier Safety Regulations, the Hazardous Materials Regulations, other federal and state safety requirements, and comprehend traffic control signs.

  Status: No action is planned on this important rulemaking topic despite current Administration plans to open the U.S. southern border to foreign commerce. The May 13, 2002, agenda again stated "Next Action Undetermined." 67 FR 33494. This was repeated in the December 2002 agenda. 67 FR 74925 (December 9, 2002). There is no entry for the topic in the June 28, 2004, semi-annual regulatory agenda or any succeeding semi-annual regulatory agenda through December 11, 2006.

- ***DELAYED/INCOMPLETE*** **- Cargo Securement Standards:** After several rulemaking actions over the past decade, FMCSA is again preparing to revise the standard for securing freight against dislodgement during motor carrier transport that results in dangerous shifting or falling cargo. The agency issued a notice of proposed rulemaking newly revising the standard on June 8, 2006. 70 FR 33430 *et seq.*

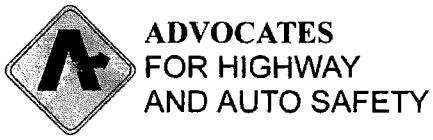
  Status: FMCSA's April 24, 2006, semi-annual regulatory agenda lists this issue for publication of a final rule in May 2006. 71 FR 23012. The final rule was published on June 22, 2006 (71 FR 35819 *et seq.*).

- **Surge Brake Requirements:** FMCSA, on its own motion, has proposed allowing hydraulic inertia surge brakes to be used on trailers operating in interstate commerce in response to a petition from an industry coalition group. Surge brakes are not currently considered in FMCSA's regulations to comply with all the requirements that all brakes on a commercial motor vehicle be capable of operating at all times, and that a single valve or brake application control mechanism simultaneously apply the brakes on both the towing unit (truck or truck tractor) and the towed unit (semi-trailer or trailer). FMCSA issues a notice of proposed rulemaking on October 7, 2006, that accepted the test results and performance representations of the industry coalition without conducting any of its own testing of surge brake performance under real-world conditions and without coordination with the National Highway Traffic Safety Administration.

Status: FMCSA's April 24, 2006, semi-annual regulatory agenda lists final action on this topic as publication of a final rule in October 2006. 71 FR 23012-23013. That completion date has been pushed back to December 2006 in the December 11, 2006, semi-annual regulatory agenda (71 FR73584, 73639). This agenda also lists this topic as an entry That May Affect Small Entities when a Regulatory Flexibility Analysis Is not Required, *id.* at 74349.

- **Motor Carrier Reports:** This discretionary rulemaking by FMCSA will transfer the regulatory requirements for reports by registered motor carriers from the Research and Innovative Technology Administration (RITA) which previously had been transferred to RITA from the former Bureau of Transportation Statistics and will adopt a new part in 49 CFR, Pt. 369 for these transferred regulations.

  Status: FMCSA lists action on this topic as the publication of a final rule, but it is characterized in the April 24, 2006, semi-annual regulatory agenda as Next Action Undetermined. 71 FR 23016. However, the agency published a final rule on August 10, 2006 (71 FR 45740 *et seq.*).



THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION: A FAILED AGENCY

FOREWORD

Seven years ago, in response to mounting annual tolls of truck-related fatalities, Congress established the Federal Motor Carrier Safety Administration (FMCSA or agency). Despite the fact that both Congress and the truck safety community had high hopes for a dramatic improvement in truck safety, 5,212 people lost their lives and 114,000 people were reported injured in crashes involving large trucks in 2005, even though only about three percent of registered vehicles in the U.S. are large trucks. In nine of the past 11 years, the number of people killed in truck-involved crashes has exceeded 5,000 fatalities. In fact, the 2005 fatality and injury totals are scarcely different than the losses of 10 years ago when 5,144 deaths and 130,163 injuries occurred in crashes with large trucks.[1]

The FMCSA was created to reduce commercial motor vehicle deaths and injuries, and Congress specifically made safety the agency's priority. Unfortunately, the agency has systematically failed in its mission. In key areas of safety regulation, data collection and analysis, enforcement, and outreach and education the agency has repeatedly made decisions and pursued policies that conflict with improved highway safety. The agency has chronically failed to fulfill its charge and, rather than providing a new approach to safety, instead has continued the same failed approach to large truck safety that undermined the effectiveness of its predecessor agency.

In fact, not only has the agency been unable to reduce the toll of truck-involved deaths and injuries, it has abandoned the goal of lowering the number of deaths each year in favor of merely reducing the *rate* of deaths – an especially pernicious safety target that allows the *number* of people killed in large truck crashes to increase even as the *rate* decreases. However, the agency has also been singularly unsuccessful at meeting its annual targets for even this revised goal.

It is time, now that the agency has been in place for seven years, and currently has a new administrator, for an in-depth review and analysis of the agency, its failure to produce Congressionally directed results, and the costs society has borne because FMCSA has failed to advance motor carrier safety.

I. Introduction

This Report reviews the pervasive, ongoing failures of FMCSA to advance commercial motor vehicle (CMV) safety in the operation of trucks, motorcoaches, and buses on our nation's highways and streets. FMCSA's failure to act responsibly to improve safety is startling in light of the fact that it was established by Congress against a backdrop of chronically poor safety regulation and oversight by its predecessor agency and FMCSA's legislative mandate that improving safety is the agency's mission and "highest priority." However, Congress has not reviewed the progress of the agency since it was first established in January 2000. Accordingly, the Report provides an analysis of the agency at a critical juncture for motor carrier safety and the leadership of FMCSA.

The background section of the Report will provide the context for the creation of FMCSA, citing the relevant history leading up to the formation of the agency and the perceived need to have a independent safety agency solely dedicated to improving CMV safety. The substantive portion of the report will evaluate FMCSA's record of failures and missed opportunities to improve safety under four broad areas of agency functions:

- Overdue, Inadequate, and Illegal Regulations
- Flawed Studies, Data, and Analysis
- Poor Enforcement and Oversight
- Deficiencies in Education and Outreach Efforts

In each of these categories, the Report provides a representative sample of FMCSA's major failures to advance motor carrier safety. The examples provided document the agency's repeated failures to fulfill its basic mission to improve motor carrier safety on our nation's highways.

The Report, while comprehensive in scope, can provide only an illustrative review of the persistent failures of the agency to serve the interests of the American people to abate CMV crashes, deaths, and injuries on our nation's highways and streets. The Report does not review every issue and each of the numerous failures of the agency, but highlights main themes and key agency actions and policies that reflect a consistent pattern of avoiding or undermining the policies necessary to advance motor carrier safety. Unfortunately, there are many more failures of FMCSA than are reviewed in this evaluation of the agency.

FMCSA has even attempted to subvert motor carrier safety through actions that go beyond its statutory authority. For example, the agency has no authority over truck size and weight policy, which is the province of the Federal Highway Administration (FHWA). Yet, national truck safety organizations became aware in early 2003 that an untitled, undated, and unsigned major briefing paper on truck productivity had been circulated within FMCSA, right up to the office of the administrator. The briefing paper openly advocated improving trucking industry productivity which, it stated, had been flat since the mid-1990s. The briefing paper argued that productivity should be achieved by increasing both the sizes and the weights of large trucks. The drafting and circulation of such a briefing paper, which clearly runs counter to the safety mission of the agency, was

highly improper. The FMCSA Administrator nevertheless asserted that the briefing paper was relevant to the safety mission of the agency.

National truck safety organizations documented this serious breach of FMCSA's statutory responsibilities in a letter to the Honorable Norman Y. Mineta, Secretary of Transportation, U.S. Department of Transportation (DOT).[2] The letter emphasized that the agency had breached its statutory responsibilities not only to achieve measurable motor carrier safety improvements as its paramount goal in regulation and enforcement, but did so by encouraging or endorsing policies that were antithetical to highway safety. Moreover, in pursuing this effort the agency's executive personnel exceeded the agency's jurisdiction and responsibilities by encroaching into policy areas clearly reserved for another modal administration within DOT. So, on at least two counts, FMCSA had egregiously exceeded its legislative authority.

This example reflects the strong tendency underlying FMCSA policy and regulation to place a heavy thumb on the side of the scale favoring industry economic health and productivity over safety. While the agency has an obligation to analyze the benefits and costs of motor carrier safety regulations, the agency does not, however, have a legislative mandate to balance productivity against motor carrier safety concerns. Nevertheless, despite the fact the agency was given a clear and specific mission to uphold "safety as [its] highest priority[,]"[3] FMCSA repeatedly chooses to promote economic interests at the expense of motor carrier safety improvement.

After the passage of seven years since the agency's creation, it is crucially important to conduct an evaluation of the ongoing deficiencies of FMCSA, especially now that the agency has new leadership. There clearly is a need for Congress and the DOT Secretary to take the appropriate steps, including remedial actions, to correct FMCSA's dysfunctional management of truck and bus safety.[4] If the problems cited in this Report are not corrected, the result will be many more lives lost and injuries inflicted – losses that could otherwise be prevented by an agency that devotes its energies to achieving the highest levels of safety possible in the operations of large trucks and motor coaches.

II. Background

FMCSA was established by the enactment of the Motor Carrier Safety Improvement Act of 1999 (MCSIA), because Congress found that "[t]he current rate, number, and severity of crashes involving motor carriers in the United States are unacceptable."[5] This legislative statement in the Findings section of the MCSIA was succeeded by several other statements by Congress that constituted a stinging indictment of the chronically inadequate motor carrier safety regulation, oversight, and enforcement actions of the Office of Motor Carriers (OMC), a bureau within the FHWA.[6] Congress also asserted in the Findings section that the number of CMV and operator inspections were insufficient, that civil penalties had not been sufficiently used to deter violations, safety regulations with statutory deadlines have not been met, an inadequate number of compliance reviews – a primary safety oversight and enforcement tool – were being conducted, and U.S. border safety needs were not being met.

These Congressional findings of the very poor state of motor carrier safety and the inadequate oversight and regulation of CMV safety by OMC had been emphasized for many years by national truck safety organizations as well as by government oversight organizations such as the Government Accountability Office (GAO).[7] Only several months before the creation of the FMCSA as a separate agency devoted to motor carrier safety, GAO had testified before Congress on the chronic deficiencies of OMC as the federal steward of motor carrier safety.[8] This testimony summarized the findings of several previous GAO studies that, over the years, had found that OMC was not doing its job to advance motor carrier safety. The Office of the Inspector General (OIG) of the U.S. DOT echoed these severe criticisms of OMC in back-to-back oversight reports and testimony, stressing that almost half of OMC's own workforce rated its safety efforts as only "poor" to "fair." The OIG also cited, among many other shortcomings, the lack of capability of the Safety Status Measurement System, called SafeStat, to identify high safety risk motor carriers because it was plagued by inaccurate, late, and incomplete data entries.[9]

As part of a pattern of neglect, OMC failed to issue regulations required by statute, ignoring statutory deadlines set by Congress and allowing delays that in some cases stretched past years into decades of inaction. In some instances, OMC adopted safety regulations or created regulatory exemptions that were inadequate in several major ways, including reducing the stringency of the regulatory requirements or excusing certain types of motor carriers or drivers from coverage by a safety standard. In other instances, rules or exemptions have been adopted that are actually inimical to CMV safety, while the agency tilted its regulatory authority heavily in the direction of advancing economic considerations at the expense of improving motor carrier safety.

The result of OMC's history of failure to fulfill statutory requirements, to implement safety regulations and to enforce safety rules already on the books led to rising numbers of truck-related highway deaths in the mid-1990s. Although truck crash deaths increased in the mid-1990s, and consistently remained above 5,000 per year starting in 1996, OMC was unresponsive to this deadly trend and did not act to reduce these deaths while also systematically failing to address long-standing statutory requirements enacted by Congress.

Because of OMC's legacy of failure to produce improvements in truck safety, safety leaders in Congress began to consider alternative approaches. In early 1999, Congressman Frank Wolfe (R-VA), Chair of the House Appropriations Committee Subcommittee on Transportation and Related Agencies, led the way by proposing a plan to move OMC into the federal agency that regulates passenger vehicles and light trucks, the National Highway Traffic Safety Administration (NHTSA). A number of national truck safety organizations supported this proposal[10] which sparked a vigorous debate within Congress as to how to reform and reinvigorate federal oversight of CMV safety. This move to reform truck and bus safety federal oversight and regulation reflected public opinion. Passenger vehicle occupants, in particular, strongly support the need to improve large truck safety and make the highways safer.[11]

Against this backdrop of pending congressional action, OMC was reorganized to integrate its functions with those of the FHWA Office of Highway Safety. The reorganization really amounted to a shuffling of personnel and functions which was viewed, at best, as ineffectual or, at worst, as yet another stumbling block that would further prevent OMC from adequately performing its safety functions. The then-DOT Secretary and the FHWA Administrator subsequently announced a safety action plan to improve CMV safety. The draft plan included few new policy and enforcement initiatives, but set no deadlines for pending actions and continued to delay other unaddressed rulemaking proceedings while placing excessive reliance on education, outreach efforts, and voluntary compliance.[12] As part of the long-term strategy the Secretary announced a goal of reducing the total number of truck-related crash fatalities by 50 per cent in 10 years.[13]

The DOT efforts did not convince Congress or the public that the reshuffled OMC and its safety plan were any more capable of improving truck safety than it had been before. Ultimately, Congress decided that the CMV safety problem was so pressing that an entirely separate modal administration, FMCSA, was required to address the issue. Congress gave the new agency a clear safety mission, made safety the agency's highest priority, and specifically provided that there be a chief safety officer in addition to the administrator.[14] Congress created FMCSA for the specific purpose of changing the course of OMC's recent history and to make significant improvements in CMV operating safety, safety regulation, and motor carrier oversight and enforcement. The legislation expressly stated "the clear intent, encouragement, and dedication of Congress to the furtherance of the highest degree of safety in motor carrier transportation."

Unfortunately, despite the best hopes of both truck safety community and many members of Congress, the MCSIA did not inaugurate a new era of improvements either in motor carrier safety or in the quality of the oversight, enforcement, and regulatory actions of FMCSA. Although the MCSIA clearly established that safety was the highest priority of the agency,[15] FMCSA has repeatedly failed to advance safety in major ways, including chronic failures to complete long-overdue rulemaking actions, act promptly to meet new Congressional regulatory deadlines, fulfill self-imposed goals of substantially reducing CMV deaths and injuries, and create reliable systems of safety data for targeting and overseeing high safety risk motor carriers. In fact, FMCSA has thwarted legislative instruction time and again to improve motor carrier safety and to get its house in order to oversee the nation's 700,000 registered interstate motor carriers. Right up to the time of release of this comprehensive evaluation of the agency, the agency continues to be the subject of an unending series of negative appraisals by national truck safety organizations, the OIG, GAO, and other organizations, such as the Oak Ridge National Laboratory.[16]

Sadly, rather than fulfill the hopes of the commercial motor vehicle safety community, the expectations of Congress, and its duty to the American public, FMCSA has already shown its inability to leave behind the bleak safety legacy of OMC. FMCSA has forged its own record over the last several years that is no better than OMC's. Despite the increase in funding FMCSA has received each year since its inception, it is evident that FMCSA is doing even less with more compared to its predecessor agency. Even the Office of Management and Budget had to conclude in 2006 that the agency "has

difficulty demonstrating how its regulatory activities contribute to reaching its safety goal."[17] In the following sections the Report details many of the reasons why FMCSA can only be regarded as a failed agency.

III. Overdue, Inadequate, and Illegal Regulations

FMCSA has continued without a pause the long history of endless delays in issuing safety regulations that was a hallmark of OMC. While many of these rules languished for years with little or no action under OMC, FMCSA has placed its own indelible stamp of delay on these safety issues or has chosen to issue regressive or impotent regulations. In many cases, where the agency issued a rule, including several regulations whose issuance was compelled by legal action, those rules are clearly unequal to the task of improving safety. Here are a few of many examples of FMCSA failures in adequately regulating motor carrier safety[18]:

- **Hours of Service for Commercial Drivers**

The hours of service (HOS) rule governs truck and bus driver hours, including maximum on-duty (work) time, weekly driving hours, limits on the number of continuous hours of driving allowed per shift, and minimum required off-duty (rest) time. Since excessive driving and work hours, and inadequate rest time, lead to driver fatigue, and fatigue plays a substantial role in large truck crashes, the HOS rule has pivotal importance in truck operating safety.

The current, unsafe HOS rule was the result of rulemaking efforts by FMCSA and its predecessor, OMC, stretching back to 1992 when OMC attempted to adopt amendments to the commercial driver HOS regulation that essentially would have permitted truck and motor coach operators to drive for over 100 hours a week.[19] The HOS regulation that had governed commercial driver HOS for several decades, until a new rule was issued in 2003 and a second version in 2005, permitted drivers to drive up to 10 consecutive hours in each shift, and work and drive up to a total of 60 hours over a 7-day tour of duty or 70 hours over an 8-day tour of duty.[20] Drivers in each driving shift of up to 10 hours also had to take a minimum of eight hours off-duty for rest prior to driving another maximum 10 hours. The rule also allowed, on the basis of a 1962 amendment, for drivers to eliminate any non-driving working time and the adherence to a circadian or 24-hour work/rest schedule and, instead, to drive and rest on an18-hour shift rotation that alternated a minimum eight hours off-duty with a maximum 10 hours driving.

The Interstate Commerce Commission (ICC) Termination Act of 1995 mandated that FHWA issue an advance notice of proposed rulemaking (ANPRM) no later than March 1, 1996; issue a notice of proposed rulemaking (NPRM or proposed rule) within one year after issuance of the ANPRM; and issue a final rule within two years after the last day of the one year deadline for a proposed rule.[21] Following the delayed issuance of an ANPRM by OMC in 1996,[22] an NPRM was issued by FMCSA in 2000 that was overdue by more than three years,[23] and FMCSA eventually issued a final rule on April 16, 2003 (2003 HOS rule).[24]

A hallmark of the entire history of HOS rulemaking has been the consistent effort of both OMC and FMCSA to dramatically increase the number of driving and working hours for commercial operators of large trucks and motor coaches. Truck safety organizations submitted enormous amounts of evidence to the rulemaking dockets showing that scores of studies over many years clearly demonstrated that workers placed on rotating or inverted work shifts[25] demanding very long hours on duty with little opportunity for adequate rest and recovery suffered more on-the-job mistakes and accidents that often culminated in fatigue-related deaths and injuries. Truck safety organizations also showed that the agencies themselves had previously found that even the prevailing HOS requirements were too demanding and led to increased driver fatigue and CMV crashes.

However, both agencies mounted repeated efforts in each succeeding rulemaking action to dismiss virtually all scientific findings that were placed in the record showing the adverse effects of long, irregular working hours as well as to reject their previous findings of record that more driving and working hours were dangerous and led to an increased risk of crashes. The 2003 HOS rule not only rejected all scientific findings showing the dangers to worker health and safety from very long hours of shiftwork with little opportunity for rest and recovery, but it also dramatically expanded both working and driving time for truck drivers.

For example, prior to the 2003 HOS rule, drivers working on a nominal eight-day tour of duty were restricted to a maximum of 70 hours of work or driving before another eight days of work and driving could begin again. However, under the April 2003 final rule, this fixed work week was changed to a "floating" work week that could be "restarted" at any point, for another 70 hours of work or driving, after a truck driver took a minimum 34 hours of layover time. As a result, both driving and working hours over 8 calendar days soared under this new HOS regulation. As FMCSA itself admitted later,[26] the new HOS rule could allow drivers on an "eight-day" schedule actually to drive up to 88 hours over 8 calendar days and work up to 98 hours.[27] In addition, the final rule increased maximum consecutive driving hours in each shift from 10 hours to 11 hours, and also increased shift off-duty time from a minimum of eight hours to 10 hours.

Truck safety organizations regarded FMCSA's 2003 HOS rule as completely unjustified, and a decision that would further degrade highway safety by promoting more operator fatigue and increased health risks for truck drivers, an occupation already saddled with high levels of disease. As a consequence, several safety groups filed suit against FMCSA to challenge the 2003 HOS rule as both illegal and as arbitrary and capricious.[28]

On July 16, 2004, the U.S. Court of Appeals for the District of Columbia overturned the regulation in a scathing opinion,[29] resting its decision on a demonstrated violation of the agency's duty to ensure that its safety regulations do not produce deleterious effects on the health of commercial drivers.[30] The Court also took to task every major element of the 2003 HOS rule, stressing that it found little support in the rulemaking record for any of the major components of the 2003 HOS rule dealing with hours of driving, work, and rest time. Although the Court vacated the 2003 HOS rule and

remanded it to the agency to address the issues raised in the Court's decision, Congress interceded to give the agency one year within which to issue a revised rule.[31]

FMCSA responded by publishing an NPRM on January 24, 2005.[32] The proposed rule, however, was nothing more than a renewed call for comments on the 2003 HOS rule previously overturned by the Court of Appeals[33] – no fundamental changes to HOS requirements were offered in response to the decision. Although FMCSA stated that it would consider public comment recommending changes to the HOS rule, the agency proposal did not revise any of the features of the 2003 HOS rule criticized by the court, nor did the proposed rule include any accommodation of the Court's decision that the new HOS regulation did not avoid deleterious effects on the health of truck drivers.

On August 25, 2005, FMCSA issued a new final rule (2005 HOS rule).[34] Although truck safety organizations again documented the long history of scientific findings that showed the adverse health and safety effects of very long working hours, the new FMCSA HOS rule was essentially the same as the 2003 HOS rule. Although the agency's own contracted research findings from studies conducted on the effects of longer driving hours showed that drivers were at increased risk of crashes with each succeeding hour of driving after about seven to eight hours on the road and were still getting less than eight hours of sleep over each off-duty period, the agency not only maintained the same maximum number of hours of work and driving allowed under the 2003 HOS rule, but actually increased the number of daily and weekly working hours for one type of truck driver.[35]

Also, FMCSA requested the Transportation Research Board of the National Academy of Sciences to review important scientific literature bearing on the relationship of truck driver working and driving demands to adverse health effects. That literature review found strong evidence of adverse health effects of truck driving in several areas, and, in the area involving the relationship of cancer to diesel emissions exposure, a probable causal relationship.[36] Despite these compelling findings about the effects on driver fatigue and increased crash risk as the hours of driving mount and the adverse health impacts of long working hours, FMCSA rejected both the comments of truck safety organizations as well as the results of its own contracted studies. It was clear that the agency intended to maintain the dramatic increase in driving and working hours of the 2003 HOS rule despite the Court's adverse decision and despite all contrary evidence of record on the dangerous effects on driver health and safety from very long driving and working hours.

In light of the importance of the HOS regulations to driver fatigue and highway safety, a number of safety and labor organizations filed a petition for reconsideration with FMCSA[37] challenging the agency's decision to issue a new final rule, the 2005 HOS rule, that was all but identical to the previous 2003 HOS rule that was unanimously overturned by the federal court. Although FMCSA responded to other petitions for reconsideration, no response was sent to the safety-labor coalition. After five months without a reply from the agency, and with other trucking interests already commencing separate court proceedings, the safety organizations that successfully sued and overturned the 2003 HOS rule were forced to return to the courthouse in order to challenge the HOS rule.[38]

- **Automated and Tamper-Proof Recording Devices**

Electronic devices of various kinds are now routinely used in CMVs for a wide variety of purposes, such giving location and route information, providing crash data information, as well as to expedite roadside truck safety inspections. In addition, information about the operation of the engine and other vehicle equipment can be automatically monitored and stored through the use of Electronic On-Board Recording (EOBRs) devices for determining when and for how long a commercial driver operated a large truck or bus. While similar devices such as mechanical and electronic tachometers have been required in Europe for many years, the use of EOBRs on CMVs in this country has been entirely voluntary pursuant to a longstanding regulation first issued by OMC.[39]

EOBRs provide an objective means of verification for CMV driver HOS regulations. It is well known that the paper logbooks used to document truck and motor coach driver records of duty status are widely and regularly falsified, often to the extent that makes it difficult or impossible for CMV enforcement personnel to determine whether the limits on working, driving, and rest time have been violated. Because of the unreliability of paper logbooks for determining HOS compliance, Congress included the topic of EOBRs in a legislative mandate to the agency in the ICC Termination Act of 1995 which required the agency to issue a rule "dealing with" a number of CMV driver fatigue-related HOS requirements, specifically including the topic of "tamper-proof recording devices."[40]

Although FMCSA's predecessor, OMC, issued an ANPRM on November 5, 1996,[41] a proposed rule on HOS amendments including a request for comments was not published until May 2, 2000.[42] However, the 2003 HOS rule did not include any final action dealing with EOBRs, despite the fact that the ICC Termination Act required a final regulation no later than March 1, 1999. Instead, the agency deferred action without a timetable.[43]

In the HOS case decision discussed above, the Court of Appeals stated that FMCSA had not properly dealt with the topic of EOBRs in the 2003 HOS. In response, FMCSA issued another ANPRM, rather than a proposed rule, on September 1, 2004.[44] That rulemaking notice, again, proposed no timeframe for addressing the topic of EOBRs and did not even indicate that the agency would necessarily move to a proposed rule as a result of this preliminary rulemaking action. A recent FMCSA semi-annual regulatory agenda entry for EOBRs indicates that a proposed rule is to be issued by February 2006.[45] Once again, the agency missed a deadline and, as of the end of 2006, the agency was nine years overdue for a final regulation addressing the issue of EOBRs.

FMCSA has recently proposed an EOBR regulation. A notice of proposed rulemaking was issued in January 2007 (72 FR 2340 *et seq.*, January 18, 2007). The proposed regulation is extraordinarily weak in several respects and will not accomplish the goal of providing accurate electronic monitoring and recording of actual commercial driver operating time in order to reduce HOS violations. The proposal is estimated by FMCSA itself to result in less than 1,000 motor carriers being required to equip their trucks or motorcoaches with EOBRs out of more than 700,000 registered interstate carriers. That constitutes only about .013 percent of truck or motorcoach companies registered with the agency.

Motor carriers will be required to install EOBRs only if a company undergoes two successive Compliance Reviews (CRs) within a two-year period, which, in both instances, show that the carrier had a 10 percent or greater violation rate. Since paper logbooks showing commercial driver records of duty status entries for time spent driving, working, or taking required rest hours are widely falsified, this approach to improving commercial motor vehicle safety and reducing commercial driver fatigue will result in virtually no motor carriers being required to install EOBRs. Moreover, the proposed rule also will allow a company required to install EOBRs to remove them after only two years of use. FMCSA is also considering allowing motor carriers using EOBRs to dispense with certain parts of the additional documentation or "paper trail" that motor carrier safety investigators rely on to additionally verify the accuracy of HOS compliance.

Another major drawback to the proposal is its reliance on HOS violations being detected through CRs. Currently, FMCSA conducts only about 1.5 percent CRs each year on the more than 700,000 motor carriers registered with the agency. This means that the rate of detection of HOS violations is exceptionally low and will result in many companies chronically violating HOS requirements with little chance that these violations will be found.

In addition, FMCSA has backtracked on its own policy view of just a few years ago that EOBRs be fully integrated with commercial motor vehicle electronic control modules (ECMs). The agency is now proposing that vehicle distance and other information be obtainable only through location tracking systems, such as Global Positioning Systems (GPS). This undermines the important feature of interfacing EOBRs with engine and transmission data, that is, of having mutual corroboration of key data about hours of operation achieved by an EOBRs separately confirmed by ECM-based data acquisitions.

FMCSA will allow drivers and motor carrier officials to make certain alterations and additions to the EOBR recorded data, as well as to enter supplementary information characterizing non-driving work time and rest time. As for security concerns, which are crucial for controlling vehicle access and unambiguous driver identification (ID), the agency only proposes that some form of driver ID be used to operate a CMV with its EOBR, but FMCSA refuses to specify any particular approach. This *laissez faire* stance will allow fraudulent access to and use of large trucks by unauthorized drivers.

FMCSA also will not perform federal certification of EOBRs but will allow manufacturer self-certification, and the agency will not oversee and certify EOBR repair or recalibration. This lax approach will almost certainly result in manipulated devices that do not accurately record driving time. In addition, the agency grandfathers all existing automatic on-board recording devices currently in use, even those that do not meet the minimum specifications of the proposed rule.

Finally, FMCSA states that it cannot determine whether the use of EOBRs might reduce fatigue or benefit driver health, but it states that it is concerned that electronic monitoring of drivers' HOS might increase driver stress.

- **Entry-Level Commercial Driver Training Standards**

CMV drivers of both large trucks and buses are not required to receive any basic training in order to operate these big motor vehicles in interstate commerce. Receiving basic instruction in both knowledge and operating skills, including certification by the states or recognized commercial driver education schools, is not a prerequisite to applying for a commercial driver license (CDL). Many drivers receive no training to operate large trucks, while others receive perfunctory and often inadequate training in CDL degree "mills" that are structured simply to ensure that drivers can pass the CDL test without necessarily being knowledgeable about the safety skills needed to drive a large truck or bus, or have sufficient familiarity with federal and state CMV and motor carrier safety regulations. The agency itself has recognized that possession of a CDL is not the equivalent of good instruction and does not mean the CDL holder is a trained and experienced driver.[46]

OMC had issued its own Model Curriculum in the mid-1980s[47] showing the comprehensive, basic instruction that was needed for entry-level drivers. The need for the extensive knowledge and skills training of the Model Curriculum was confirmed by both OMC's contractor report as well as by independent GAO[48] and NTSB[49] reports that found that training quality, including both classroom time and hands-on driving instruction, were generally inadequate in the private sector.

Against this background, the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 mandated that the Secretary of Transportation report to Congress on the effectiveness of private sector entry level CMV driving training by December 18, 1993.[50] The basic thrust of the provision was the presumption by Congress that, unless the Secretary could show that the private sector was doing a good job transmitting basic, adequate skills and knowledge to entry-level commercial drivers, the agency must adopt regulations to ensure that these drivers receive critical information and develop good skills to pilot big trucks and buses. Since the Secretary did not file a report showing that basic entry-level driver training was not needed, the agency was required to meet the statutory deadlines for the issuance of a proposed rule, December 18, 1992, and a final rule, December 18, 1993.

OMC violated both statutory deadlines and published only an advance notice of proposed rulemaking in 1993.[51] In fact, the mandated report to Congress that was supposed to be submitted in December 1993, was eventually provided to Congress on February 5, 1996, more than two years late.

Following that action, several years elapsed during which numerous semi-annual regulatory agendas either successively deferred the date for a proposed rule or cited no date for any action, instead indicating "next action undetermined." During that time, the agency issued only a Notice of Availability and Request for Comments in 1996[52] on a contractor's report that had been completed in July 1995.[53]

Despite the repeated confirmation that private-sector training in basic knowledge and skills was inadequate, and that entry-level drivers were coming into the workforce with inadequate capabilities, FMCSA nevertheless published a proposed rule in August 2003 that did not require any skills and basic knowledge training for entry-level drivers,

and required training only in 4 minor, adjunct areas of driver knowledge.[54] This decision to avoid any requirements for basic know and skills education directly contradicted the previous rulemaking stance taken by the agency that entry-level driver training was inadequate and that novice truck and bus drivers needed comprehensive, basic knowledge and skills training. The agency also proposed that all novice drivers with at least two years of licensed CMV operation would be grandfathered by any final rule and, accordingly, would not have to undergo instruction even in the 4 minor areas of driver knowledge.[55] This assertion directly contradicted the previous finding that drivers with less than 5 years of driving experience should be considered entry-level drivers. In addition, FMCSA directly contradicted the previous position taken in the advance notice of proposed rulemaking that the CDL test was inadequate for instilling basic knowledge and skills and, in the proposed rule, stated that the CDL test provided such basic capabilities and that training in basic knowledge and skills would be "redundant."[56]

Several truck safety and industry organizations filed comments with the docket of the proposed rule pointing out that FMCSA had contradicted its own previous finding that novice CMV drivers were not receiving adequate training from the private sector in basic knowledge and operational skills, thereby triggering the legislative requirement that the agency adopt basic knowledge and skills training regulatory requirements.[57] Several commenters on the proposed rule stressed that the agency was clearly violating its statutory directive to require basic knowledge and skills training, and that the reduced requirements had little to do with a CMV driver being knowledgeable about the complex operating requirements of large trucks and buses. Comments also were filed that objected to the agency's dramatically reduced scope for what constituted an entry-level driver, especially the fact that a driver with only 2 years of operating experience would nevertheless be exempt from instruction even in the 4 minor areas of knowledge being proposed in the notice.

FMCSA issued a final rule on May 21, 2004,[58] which simply disregarded all comments emphasizing the agency's failure to abide by its legislative mandate for entry-level driver training. The final rule came 13 years after the ISTEA provision mandating agency action on entry-level driver training and 12 years after a final rule was required. A careful review of FMCSA documents and the administrative record, including the final rule and its accompanying regulatory evaluation, provided no adequate rationale for the agency's belief that training in the 4 minor areas required in the final rule would produce a positive safety effect.

Moreover, FMCSA not only disregarded arguments that it had unacceptably abbreviated the scope of application for what would be regarded in any final rule as an entry-level driver, it further reduced the pool of drivers that would be subjected even to the severely reduced requirements of the new regulation by defining a novice driver as a truck or bus operator with less than one year of driving experience with a CDL. The agency also repeated its assertion that the CDL alone provides adequate driver training, although the previous rulemaking record contained several statements by the agency that the CDL is a licensing standard, not a training standard, and therefore cannot provide basic knowledge and skills training.[59]

A lawsuit was filed against FMCSA in the U.S. Court of Appeals for the District of Columbia on July 13, 2004, challenging the May 2004 final rule as arbitrary and

capricious agency action.[60] The agency, it was argued, had adopted a regulation that was demonstrably at odds with the nature and methods of entry-level driver training previously found by the agency to be necessary and effective to ensure proper training for entry-level CMV drivers. The dramatically reduced regimen adopted in the final regulation had little to do with the core training needs that the agency itself had previously identified as being necessary. In a unanimous decision rendered on December 2, 2005,[61] the court found that FMCSA had acted arbitrarily, capriciously, and violated its responsibilities under ISTEA Section 4007(a) by adopting a regulation "that focuses on areas unrelated to the practical demands of operating a commercial motor vehicle."[62] As a result, "[t[he agency, without coherent explanation, has promulgated a rule that is so at odds with the record assembled by DOT that the action cannot stand."[63] Accordingly, the Court of Appeals allowed the promulgated final rule to remain in effect while remanding it to FMCSA in order for the agency to rework the regulation in conformity with the findings and conclusions reached in the rulemaking record.[64] No renewed rulemaking action has yet been taken by FMCSA, although an entire year has elapsed since the court's decision overturning the final rule.

Congress has taken note of the agency's failure to adopt a comprehensive driver training regulation. In pending appropriations legislation for Fiscal Year 2007, the House Report accompany the bill, H.R. 5576, cites the federal court decision overturning FMCSA's inadequate entry-level training rule, as well as to stress that FMCSA had avoided the findings of its own contracted report and the guidance of its own model training curriculum in publishing the final rule. The House Report directs the agency to issue a regulation that is comprehensive by including on-street, behind-the-wheel instruction.[65]

- **Minimum Training Requirements for Operators and Training Instructors of Multiple Trailer Trucks (Longer Combination Vehicles).**

Commercial drivers of double- and triple-trailer large trucks are required to obtain state-issued special endorsements to drive a Longer Combination Vehicle (LCV).[66] This special endorsement purports to demonstrate that the driver has additional knowledge and familiarity with safely operating these giant, unwieldy combination trucks that, in certain configurations, can stretch to over 120 feet long and weigh well in excess of 100,000 pounds. However, the LCV endorsement is not backed by any requirements for drivers to receive special training for operate these giant rigs.

Along with the entry-level driver training discussed above, the 1991 ISTEA law mandated that the DOT Secretary shall initiate rulemaking to adopt LCV driver training requirements within two years, by December 18, 1993.[67] An ANPRM was issued on January 15, 1993.[68] Although FMCSA has repeatedly calendared this topic for subsequent action in its semi-annual regulatory agendas, none of the agency's self-imposed target dates – all of them adopted many years after the legislated deadline had elapsed – was met.

In fact, truck safety organizations were forced to file suit against FMCSA in order to force the agency to issue a final rule on this and several other rulemaking issues.[69] That case resulted in a settlement agreement in which the agency agreed to issue a final rule by March 30, 2004.[70] In compliance with a settlement agreement, FMCSA finally

issued a proposed rule on August 12, 2003.[71] In comments filed with the docket, truck safety organizations emphasized that the agency had undermined Congressional purposes by grandfathering 97 percent of current CDL holders with LCV endorsements, excluding them from having to receive any advanced driver training. The agency also relied on a study done several years earlier that the DOT Secretary's office had warned the agency was defective and could not be used. In the eventual final rule, issued on March 30, 2004,[72] FMCSA followed through on its proposal to exempt nearly all current LCV drivers from any training requirement.

As a result, for all practical purposes, despite a Congressional mandate, there is effectively no current requirement that the overwhelming majority of LCV drivers be adequately trained 16 years after Congress directed that LCV drivers received such training.

- **Supporting Documents for Hours of Service for Commercial Drivers.**

Section 113 of the Hazardous Materials Authorization Act of 1994 (Pub.L. 103-311, August 26, 1994) specifies several actions to be completed by the Secretary, including a requirement that Secretary prescribe regulations specifying the number, type, and frequency of supporting documents that must be retained by a motor carrier in order to permit verification of the accuracy of record of duty status maintained by each commercial driver and the length of time for which the supporting documents shall be retained. This period must be at least 6 months from the date of a document's receipt. The statutory deadline for issuing such regulations was February 26, 1996.

This regulation has crucial importance for requiring the kinds of documents to provide corroboration of the hours of work, driving, and off-duty time that commercial drivers enter into their paper logbooks. Since it is widely known that truck drivers regularly falsify their record of duty logbooks to conceal illegal hours that violate federal hours of service limits, this regulation would specify the records that motor carriers must maintain to show the "paper trail" behind their logbook entries. The importance of this rule becomes even more critical given FMCSA's chronic failure to required EOBRs to accurately record when a driver is actually operating a big truck.

Although FHWA opened rulemaking on April 20, 1998,[73], and published a supplemental notice of rulemaking on November 3, 2004,[74] no final action has been taken on this important regulatory safety topic. FMCSA has missed the statutory by 11 years. In the April 2006 semi-annual regulatory agenda, FMCSA calendared a final rule for publication in July 2006. However, as of the end of 2006, no final rule has been published. Recently, as described earlier, FMCSA has proposed an extraordinarily weak regulation for the installation and use of electronic on-board recorders (EOBRs) to record commercial motor vehicle operator driving time for compliance with the hours of service requirements. The agency proposes to delete the requirement to maintain any separate supporting documents that refer to a driver's driving time if those hours are recorded by an EOBR and to require supporting documents only for non-driving duty hours and off-duty time.

- **Commercial Vehicle Driver Biometric Identifier.**

A biometric or other unique driver identifier has become crucially important both for security and safety reasons, including the need to ensure that illegal access to sensitive cargo or operation of a CMV does not occur, particularly with regard to truck-transported, placarded quantities of hazardous materials (hazmat). The Truck and Bus Safety and Regulatory Reform Act of 1988 directed the DOT Secretary to issue regulations by December 31, 1990, establishing minimum uniform standards for a biometric identification system to ensure the identity of commercial motor vehicle operators.[75] An ANPRM was issued on May 15, 1989,[76] followed by an Information Notice on March 8, 1991.[77]

Subsequently, in the Transportation Equity Act for the Twenty-First Century (TEA-21), Congress amended the biometric identifier requirement to remove the mandate that commercial drivers specifically shall have biometric identifiers and substituted the requirement that CDLs shall contain some form of unique biometric identifier after January 1, 2001, to minimize fraud and illegal duplication.[78] TEA-21 directed the DOT Secretary to complete regulations to achieve this goal no later than 180 days after TEA-21 enactment, that is, by December 9, 1998.[79]

The new deadline was flouted for over six years until FMCSA finally withdrew this rulemaking on May 5, 2005,[80] claiming that it "has met the statutory objective through other efforts."[81] Despite two successive acts of Congress and the passage of 18 years, FMCSA still has adopted no regulation and policy on unique identifiers for CMV drivers.

IV. Inadequate Studies, Data, and Analysis.

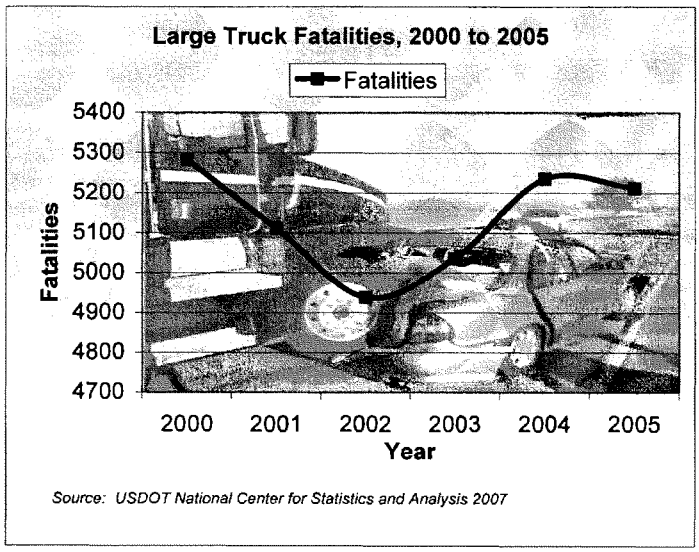
FMCSA's data collection and analysis system, as well as its in-house and contracted studies, strongly affect its allocation of resources for safety countermeasures such as enforcement, education, and outreach. For this reason, the quality of the agency's studies and the data it relies upon for policy decisions must survive critical evaluation. However, FMCSA's efforts to collect timely, accurate data on motor carriers and their crash involvements, as well as to study the reasons for CMV crashes, has been plagued with chronic, systemic defects that have been shown for years through oversight reports and testimony authored by the GAO, the U.S. DOT OIG, and CMV safety organizations. Because these defects were so serious, FMCSA, on the recommendation of the OIG, removed key safety data from public availability on its web site in 2004.[82] As of the end of 2006, that data is still unavailable to the public.

Unfortunately, as illustrated in this Report, few of these defects have been corrected and, in fact, in many cases FMCSA has responded to detailed critiques of its inadequate studies and data with continued inaction or intransigence. Although Congress was critically aware of the severe deficiencies in truck data when the legislation creating FMCSA was enacted in 1999, the provisions of the law directing the agency to correct the serious data problems have gone unheeded.[83]

- **FMCSA Continues to Allow Large Truck Deaths to Increase Each Year.**

As part of the response to the increase in truck-related fatalities in the late 1990s and growing dissatisfaction in Congress with OMC's administration of motor carrier safety, the Secretary of Transportation in 1999 promised a 50 percent reduction in the number of large truck crash fatalities in 10 years, by the year 2008. This was an especially appropriate safety emphasis for DOT because of the dramatic overrepresentation of large trucks in fatal crashes and deaths. As pointed out in annual *Fatality Facts* published by the Insurance Institute for Highway Safety, although large trucks are only 3 to 4 percent of registered vehicles, they are responsible for 12 to 13 percent of the total motor vehicle crash deaths each year. Using 1998 as the baseline year for achieving the 50 percent reduction in annual truck crash fatalities pledged by the Secretary would mean that the number of deaths in calendar year 1998, 5,395, would be reduced by half over the ensuring decade to only 2,697 fatalities in 2008.[84]

Unfortunately, truck crash deaths from the last full year of reported national data, 2005, shows that truck deaths at 5,212 are still above 5,000 each year.[85] In fact, the first few years following the Secretary's promised fatality reduction goal showed no real progress in lowering truck crash deaths. The number of deaths in 1999 stood at 5,380 and the following year saw little change with fatalities at 5,282. By 2003, it was clear that the 50 percent reduction goal could not be met by 2008. Five thousand, thirty-six (5,036) truck crash deaths occurred in 2003. Truck-related fatalities increased again in 2004, to 5,190, and FMCSA initially provided a preliminary estimate that for 2005, truck-involved crash deaths could reach 5,306.[86]

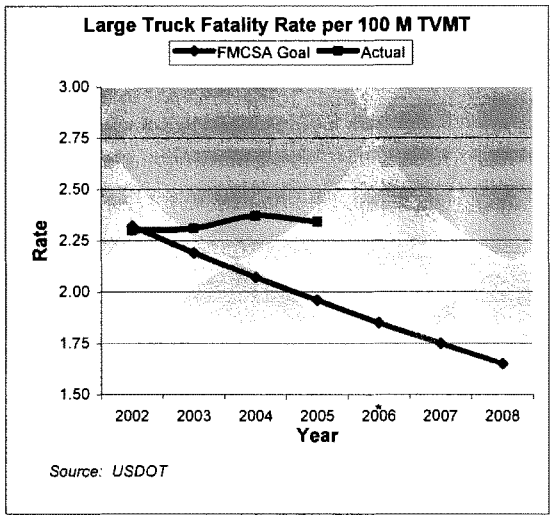


With the number of deaths increasing year by year, FMCSA shifted its ground following the inception of the agency. The agency switched to a decrease in the *rate* of truck crash deaths per 100 million vehicle (or truck) miles traveled (100MTMT) rather than pursue a reduction in the *number* of truck deaths each year. The baseline rate

chosen, as described later in each annual U.S. DOT Performance Plan and in the most recent FMCSA Strategy and Performance Plan,[87] was the rate of 2.8 truck crash deaths per 100 MTMT that prevailed in 1996; the stated goal was to achieve a rate of 1.65 deaths in 2008.

However, this is a particularly pernicious approach to abating truck crash losses, as was pointed out early on not only by truck safety organizations in testimony before Congress,[88] but even by the U.S. DOT OIG in a 1999 report.[89] The OIG report correctly understood that a truck safety performance measure based on reducing the fatality rate paradoxically allows the number of truck crash deaths to *increase* each year because the number of miles traveled by large trucks also increases. This creates the possibility that the number of fatalities will continue to rise even while the fatality rate improves. The OIG report was clear: this approach was unacceptable as a yardstick to measure motor carrier safety progress, and so the OIG explicitly recommended that DOT revert to a measure of reducing the actual number of truck crash deaths, regardless of the fact that there more trucking firms than even with more miles traveled each year. However, it is clear that FMCSA has ignored the OIG recommendation.

The OIG report stated in 1999 that the Department intended to change its goal in accordance with that recommendation to reduce the actual number of deaths. The OIG's optimism was not rewarded – the change did not occur. FMCSA has continued to pursue the goal of reducing the truck fatality rate while the number of deaths each year continues to mount. In 2002, 4,939 truck crash fatalities occurred with a fatality rate of 2.30. However, in 2003, the number of deaths increased to 5,036 *and* the rate worsened to 2.33. In 2004, the death toll rose again, with 5,190 deaths recorded by NHTSA, a figure scarcely different from 1996, eight years earlier. The recent OIG report released in April 1999 pointedly remarks on the faltering efforts of FMCSA to abate the rise in truck crash deaths and to meet its self-imposed goals of lowering the fatality rate of large truck crashes.[90]



However, it is clear that neither the goal of 1.65 deaths per 100 MTMT will be achieved in only three more years of truck fatality rate figures recorded in FARS nor will the number of deaths be substantially reduced.[91] As the OIG explicitly noted in his report in 1999, more than 5,000 deaths suffered each year is equivalent to a major airline crash with 200 deaths every two weeks; this level of human loss is simply not acceptable.

But instead of using resources provided through Congressional appropriations to reduce the horrific annual death toll from large trucks, FMCSA instead seeks to lower only the *rate* of deaths while allowing the *number* of fatalities to mount each year. This shows that the ultimate achievement of many millions of dollars spent on data collection, analysis, oversight and enforcement, and outreach and education efforts is a misguided reduction in the rate of truck crash fatalities that still results in a rising death toll that already surpasses five thousand American deaths each year.

Recently, FMCSA has even more dramatically changed the terms of the debate over motor carrier safety with respect to annual fatalities attributed to large trucks. In Section 4 of the FY2008 budget submission, the agency has jettisoned the use of the well-known yardstick of large truck crash fatalities each year – the number of fatalities per 100 Million Truck Miles Traveled (MTMT), a direct exposure measure, in favor of a completely new exposure denominator comprising *all* annually accrued motor vehicle mileage.

FMCSA acknowledges in its budget submission that it could not meet its goal for the end of calendar year 2008 to achieve a fatality rate of 1.65 per 100MTMT. The disparity between the annual goal of lowering the fatality rate of large trucks increased each year. For example, in the FY2007 budget submission, FMCSA stated that the goal for 2003 was a rate of 2.19, but the actual rate was 2.31. Similarly, in 2004 the goal was 2.07, but the rate was 2.29, and in 2005 the goal was 1.96, and the estimated rate was projected to be 2.33.[92]

Accordingly, FMCSA has set a new goal to be achieved by 2011. However, that goal is no longer expressed as the large truck fatality rate per 100 MTMT, but rather as the combined bus-large truck fatality rate *per 100 Million Total Vehicle Miles Traveled.* Although FMCSA in Section 4 of its FY2008 budget submission continues to use the other, proper exposure measure for the passenger vehicle crash rate, it argues that:

> The new DOT large truck and bus sub-measure will track fatalities involving both occupants and non-occupants in a crash involving a truck with a gross vehicle weight rating of 10,000 pounds or more and/or motor coach. *This new measurement will use total VMT, rather than truck VMT. Total VMT captures the traffic volumes of all vehicles, which is important given that approximately three-fourths of fatal large truck crashes in recent years have involved a passenger vehicle.* The FY2008 for large truck and bus fatalities is 0.171.[93]

There is little question that this major shift away from using a genuine, direct exposure denominator for annual truck deaths and instead submerging truck deaths within a rate representing ***all*** motor vehicle annual mileage traveled is an attempt both to mislead Congress and the public, and to provide a false appearance of a low rate of large truck deaths each year.

- **Defects of Agency Motor Carrier Safety and Crash Data.**

Chronic problems of data adequacy, including accuracy, completeness, and timeliness, have compromised FMCSA's effectiveness in conducting their compliance and enforcement programs. These defects, which were documented by federal government oversight investigations that stretch back into the middle and late 1990s, continue today and have not been corrected by FMCSA.

For example, the OIG issued a report in early 1997 showing that database problems used to prioritize motor carriers for compliance reviews were endemic at OMC.[94] The data deficiencies found included inadequate numbers of carriers covered in the agency's database, failure to include state and local records of crashes and violations of local traffic laws, and inaccurate and delayed data submissions by the states.

A follow-up OIG study was conducted two years later, in 1999, and found the same defects as the 1997 study, as well as a failure to ensure that local enforcement agencies accurately and completely report crashes, traffic violations, and roadside inspection results.[95] Those data problems were found by the OIG to undermine any effectiveness of the Safety Status Measurement System (SafeStat) to identify and target motor carriers with high-risk safety records by, for example, targeting compliance reviews of the worst companies. SafeStat problems will be discussed below in a separate section.

These criticisms of the serious defects in CMV data systems were extended by the OIG in early 2000 to the newly-created FMCSA's use of the Commercial Driver Licensing Information System (CDLIS).[96] The OIG found that both FMCSA and the states were failing to collect information on driver disqualifying violations and also

failing to disqualify drivers even though a state's CDLIS data bank showed that drivers who should be disqualified were still operating their vehicles.

These findings of data inadequacies were mirrored in findings and testimony from the GAO that began before the creation of FMCSA and have continued until the present.[97] Sadly, the careful evaluation of severe data problems at FMCSA and specific recommendations for improvement have gone unheeded at the agency. In November 2005 the GAO issued yet another report on the failures of FMCSA to correct these deficiencies.[98] In general, GAO found that CMV crash data still do not meet general data quality standards of completeness, timeliness, accuracy, and consistency. One-third of CMV crashes that the states are required to report to FMCSA were not reported and those crashes that were reported were not always accurate, timely, or consistent. GAO also found that FMCSA had no formal guidelines for awarding grants to the states for their data improvement efforts. Moreover, even the agency's ratings of how well or badly states were performing in their data collection and transmission efforts were flawed because of the methodology used by FMCSA to develop the state rating system.

Recently, a follow-up oversight report issued in April 2006 by the U.S. DOT OIG has found that data quality is still seriously defective and that it undermines several important areas of FMCSA enforcement and substantially reduces the effectiveness of the Safety Status Measurement System (SafeStat) to identify high safety risk motor carriers.[99] Although FMCSA adopted a requirement a few years ago that registered motor carriers had to update their registration every two years,[100] 192,000, or 27 percent, of the registered 702,277 motor carriers did not update their census data on both drivers and trucks despite the requirement of the 2002 regulation. In addition, state crash forms are still not consistently defining a large truck or a reportable crash, failings which undermine the reliable data that FMCSA needs. The OIG April 2006 report found that FMCSA, despite the previous, February 2004 OIG oversight report,[101] had not taken sufficient action to achieve full updates of motor carrier census data and standardize crash data requirements and collection procedures. Data quality is crucial because the combination of updated, timely census data and crash data are used by SafeStat to rank safety performance of motor carriers and target them for compliance reviews and inspections. As the OIG stressed in this recent report, without these critical data, FMCSA cannot accurately identify the high-risk motor carriers.[102]

These documented inadequacies of data collected by FMCSA that are central to its oversight and enforcement mission raise the serious question of whether the agency has the capability to make accurate safety determinations and to secure compliance with motor carrier safety requirements.

- **Systemic Defects in the Safety Status Measurement System Undermine the Agency's Ability to Identify Motor Carriers with the Highest Safety Risks.**

FMCSA has developed SafeStat to identify and target motor carriers with high-risk safety records by, for example, scheduling compliance reviews of the worst companies. SafeStat is a complex algorithm used by FMCSA to identify which motor carriers present the highest risk of having crashes and of committing motor carrier safety regulatory violations. Safestat relies mostly on data supplied by the states such as roadside inspections, information drawn from compliance reviews, as well as other

information collected by FMCSA. Recent evaluations of SafeStat by the OIG and by the Oak Ridge National Laboratory have both come to the same conclusions: SafeStat is not objective, many motor carriers are improperly identified as high safety risks, many motor carriers fail to be identified as high safety risks, and the data used to calculate SafeStat is unreliable for the reasons listed in the previous section of this Report.[103]

The 2004 OIG report found that the usefulness of SafeStat was undermined by substantial weaknesses in the data reported to FMCSA by the states and motor carriers. Specifically, there was a lack of updated census data for 42 percent of the active registered motor carriers that had failed to meet the congressionally mandated requirement to update their registration every two years, and only 31 percent of these carriers could achieve SafeStat calculations for one or more safety evaluation areas. The OIG Report also found that about one-third of large trucks involved in crashes each year had no reports in the database, six states did not report any crashes during a six-month period that was reviewed, and that 20 percent of the crashes in fiscal year 2002 were reported six or more months late. There also were high levels of underreporting of moving traffic violations that had been identified during roadside inspections, as well as failures to identify carriers associated with violations or misidentification of carriers with violations. Finally, the OIG Report found that 71,000, or 11 percent, of the active interstate motor carriers were on record as having no power units and 98,000, or 15 percent, of registered carrier were on record as having no drivers.

The OIG Report also determined that these severe data deficiencies were not being corrected by FMCSA through the use of existing sanctions and incentives to promote better data reporting by states and motor carriers. FMCSA had not imposed sanctions on any states, including withholding basic Motor Carrier Safety Assistance Program (MCSAP) grant funds from states for failing to correct data quality problems. Even MCSAP incentive grant formulas are not adequate because the agency only uses timeliness of data submitted to make incentive calculations while data accuracy and completeness – which are crucial – are ignored.

As a result of these severe data defects, the OIG report recommended that the use of these defective data continue for internal agency purposes, but that it was not reliable enough for public use. As a result, FMCSA suspended posting these crash and safety data about motor carriers on its web site shortly after receiving the OIG report until these data met higher standards for completeness, accuracy, and timeliness, although the agency has recently indicated that it will being providing these data again with warnings that FMCSA is attempting to upgrade their accuracy.[104] As discussed in the foregoing section, the latest GAO report issued November 2005[105] shows that little progress has been made by FMCSA in nearly two years to correct these system defects in its data system for determining the safety of motor carrier management and operations. Furthermore, the latest OIG report of April 2006 confirms that serious problems of data completeness and accuracy continue to saddle FMCSA's accurate identification of motor carriers with high safety risks and appropriately targeted enforcement efforts.[106]

One of the OIG's recommendations in the 2004 report was for FMCSA to hire a contractor to conduct a new study for revalidating SafeStat. Oak Ridge National Laboratory performed this review, and its study was sent to the agency dated October

2004.[107] Unfortunately, this evaluation uncovered fundamental defects in SafeStat that the prior OIG evaluation had not detected:

> **SafeStat Is Not Objective:** The basis of SafeStat ultimately is subjective, based upon expert consensus opinion or judgment, and therefore has no meaningful statistical relationship to the data used to operate the system's algorithm for detecting high safety risk motor carriers.
>
> **Most Motor Carriers Are Improperly Identified as High Safety Risks:** The identification of 9 of every 10 motor carriers as high safety risks is mistaken and only an artifact of the data and the use of those data in the SafeStat algorithm.
>
> **The Data Used in SafeStat Are Often Unreliable:** As was also found both by the OIG and GAO, the data used in SafeStat are defective. About half the states either report truck crash data late, underreport the number of truck crashes, or overreport the number of truck crashes. Also, the data sufficiency criteria are unrealistic, do not support a sound statistical use of the data gathered by FMCSA, and often result in many motor carriers not receiving a safety ranking.

With regard to this last point, although the Oak Ridge Report does not specifically address the implications of the data sufficiency issue in detail, the criteria for being ranked strongly favor larger carriers with more power units, drivers, and higher annual vehicle-miles-traveled. Many small carriers with few power units and drivers cannot achieve the exposure necessary to be safety ranked, yet many small motor carriers are apparently at high risk of safety violations. Because they are not identified by SafeStat, these small motor carriers "fly under the radar" of detection by FMCSA for oversight and enforcement.

It is unknown what steps FMCSA is taking to correct these baseline defects of both SafeStat and the data upon which SafeStat relies to make its calculations for tagging motor carriers as high safety risks and subjecting them to compliance reviews and more roadside inspections.[108] Although Congress directed that motor carrier data systems be ensured for accuracy, reliability, and timeliness both in TEA-21 and in the ensuing legislation creating FMCSA, the MCSIA, these mandates have still not been fulfilled. However, FMCSA recently published a notice advising of a review of SafeStat.[109] A review of the notice makes it apparent that it is not a baseline review of SafeStat despite several oversight reports from the GAO, the U.S. DOT OIG, and the Oak Ridge National Laboratory setting forth fundamental defects in SafeStat, including the premises for the system and the algorithm used to calculate safety scores, as well as serious data deficiencies. None of these oversight reports is acknowledged in the Federal Register notice and none is entered in the agency's docket for the use and information of members of the public and Congress interested in evaluating how SafeStat should be improved.

Recently, testimony presented by Advocates to Congress in March 2006 provided a detailed exhibition of the severe deficiencies of SafeStat at every level of analysis.[110] This has been part of the basis for Congress to request a detailed investigation by GAO with a final report on the specific issues and deficiencies of SafeStat. This forthcoming report will be preceded by another report on the defects of the compliance review (CR)

process and how CRs depend strongly on the data and judgments reached through the use of SafeStat.

Advocates also filed detailed comments with a docket established by FMCSA in mid-2006 to request public input on how SafeStat could be improved.[111] Advocates stressed in its comments that SafeStat was inherently incapable of identifying serious at-risk motor carriers that should be audited for safety of its drivers, equipment, and management because the system had no external benchmarks for determining the safety quality of any given motor carrier. SafeStat is disconnected from goals for achieving improved motor carrier safety, including FMCSA's own stated goal of lowering the annual fatality rate for large trucks. Instead, SafeStat is a relativist, peer-to-peer ranking system. It operates similarly to a college professor grading students "on the curve," rather than using an objective standard to gauge trucking or motorcoach company safety. In addition, many of the criteria used to identify a carrier as a company at risk or that merits closer attention and oversight are admitted by FMCSA to be ultimately subjective. Moreover, the data that the agency relies on for plugging in values to the rating algorithm that operates SafeStat have been shown repeatedly to be unreliable, incomplete, or to be submitted late to FMCSA by the states.[112]

For all practical purposes, FMCSA currently does not have a reliable or an objective system for detecting which motor carriers are at risk of committing serious violations of the agency's safety regulations or of having high rates of crashes.

- **Serious Defects in the Federal Motor Carrier Safety Administration's Large Truck Crash Causation Study.**

FMCSA's enabling legislation, the MCSIA, directed the agency to "conduct a comprehensive study to determine the causes of, and contributing factors, to crashes that involve commercial motor vehicles."[113] The study addressing large trucks quickly got underway and has been jointly administered by FMCSA and NHTSA since its inception as the Large Truck Crash Causation Study (LTCCS) in 2000. The data collection of just under 1,000 truck crash cases took place from April 2001 to December 2003. The study to date has an unknown total cost,[114] but is probably about $20 million.[115] Unfortunately, the study has no scientific credibility and cannot be used to predict or explain the reasons for truck crashes or to design and implement specific safety interventions to reduce the number and severity of truck crashes. However, FMCSA refuses to acknowledge any peer critiques of its study and continues to rely on it for policy decisions, even though it was explicitly warned by the Centers for Disease Control (CDC) that no policy judgments could be based on the LTCCS.

The LTCCS from the start has been subject to both broad and detailed criticism by a National Academy of Sciences Transportation Research Board (TRB) committee empanelled to provide oversight and review of the study, by the CDC,[116] and by truck safety organizations.[117] In a succession of meetings with FMCSA and NHTSA staff, along with several letter reports sent to the FMCSA Administrator over more than two years that concluded with the final report sent September 4, 2003, the TRB committee emphasized the fundamental defects of both the database and the research design used by the two agencies.

These criticisms echoed similar or identical findings about the fatal defects in the LTCCS also pointed out by truck safety organizations and, later, in the CDC report. All these critiques essentially emphasized the inherent bias and subjectivity infecting the data that were collected, the lack of a comparison group to test hypotheses, the gathering of baseline data prior to formulating theories about the reasons for truck crashes, the inability of the study to provide causal explanations for truck crashes, and the ease with which the governing notions of the study could be mistakenly understood to assign fault to both truck and passenger vehicle drivers. In addition, both the TRB committee and the CDC pointed out that they were engaged to oversee and evaluate the LTCCS too late in the life of the study, after fundamental – and mistaken – decisions about how to proceed had already been made, including what basic data to collect.

To date, only a single publicly available FMCSA report had been issued on the LTCCS.[118] Recently, FMCSA has sent a final report to Congress in March 2006.[119] In fact, despite the enormous expense of taxpayer dollars to fund the study, FMCSA has stated that no detailed final report would be issued on the LTCCS, but that the database would be available for researchers to use.[120] In other respects, however, the criticisms lodged against the LTCCS over the past several years have both generally and specifically been ignored by FMCSA, and the data originally collected by the two agencies along with the simple, iterative examination of each truck crash case for clues about why it happened, has not changed. In fact, FMCSA has basically refused to respond to the detailed, peer-based criticisms of the LTCCS, including a refusal to address any of the specific defects of the study presented at the *2005 International Truck and Bus Safety and Security Symposium.*[121] Despite the severe criticism of the study's design and data gathering by the CDC in its report, the chief FMCSA representative on the LTCCS recently stated that the CDC found the research methodology of the study to be sound.[122]

This stance of refusing to respond to, or even acknowledge, the extensive, detailed critique of the severe inadequacies of the LTCCS has not been relinquished by FMCSA in its final report to Congress cited above. In that report, the agency continues to regard its research design and data as sound, and promises in the concluding section of the report that it will continue to use the information gathered from the study to seek the causes of truck crashes. FMCSA evidently intends to persist in its belief that the LTCCS can provide causal explanations of truck crashes even though no scientific peer group would regard the study as having any predictive or explanatory capability to identify the causes of truck crashes. Strangely, FMCSA recently published an analysis of the LTCCS performed by two well-known consultants[123] that openly acknowledges almost all of the baseline defects of the study and its inability to explain the causes of truck crashes and contradicts the intransigent posture of the agency exhibited in its final LTCCS report to Congress.

The agency has responded similarly with respect to the currently ongoing Bus Crash Causation Study (BCCS) that also was mandated by Congress in Section 224 of the MCSIA. FMCSA is using the same data collection system and research design for the BCCS that was found to be inadequate by TRB, CDC, truck safety organizations, and even FMCSA's own consultants in a recent agency publication.[124] FMCSA has apparently not changed its approach despite the demonstrated defects of the LTCCS.[125]

If the BCCS reproduces the same baseline defects of the LTCCS, which appears likely, it again will be federal money misspent on an effort that, as the TRB committee pointed out, can provide no guidance on what safety policies or interventions to choose to improve either bus or large truck safety.

V. Failures of Agency Enforcement and Oversight.

A series of reports by the U.S. DOT and OIG, as well as independent, ongoing assessments by truck safety organizations, tells a discouraging story about the quality and extent of FMCSA vigilance and competence in overseeing motor carrier safety and enforcing requirements contained in its Federal Motor Carrier Safety Regulations (FMCSR). The massive 1999 OIG report[126] determined that motor carrier enforcement was not effective in ensuring that companies comply with safety regulations and that the federal enforcement program did not adequately deter noncompliance. As discussed below, and in the following section on FMCSA's Education and Outreach efforts, there are several problems besetting agency enforcement and compliance, including perennially low numbers and percentages of compliance reviews and an agency tendency, as documented and stated in the 1999 OIG report, to repeatedly shift emphasis from fines and noncompliance determinations to collaborative, educational, partnership-with-industry approaches that do little to improve motor carrier safety.

- **Inadequate Enforcement of Commercial Driver Hours of Service.**

Most interstate commercial drivers are required to keep records, including a logbook of their compliance with HOS on-duty and off-duty requirements, for inspection by law enforcement authorities. It is well known that HOS paper logbook violations have been at virtual epidemic proportions for many years, a fact that neither OMC nor FMCSA would admit or document. In fact, it has long been known that many drivers keep two or even three logbooks, one of them specifically doctored for presentation to law enforcement officers. The extent of widespread fraud in preparing the logbooks showing commercial driver record of duty status (RODS) was only documented when independent studies of HOS violations were conducted by the Insurance Institute for Highway Safety[127] and also shown in the background assessments of the motor carrier industry prepared by University of Michigan researchers[128] for the HOS proposed rule published by FMCSA in 2000.[129]

It is clear from the record that commercial drivers have regularly exceeded maximum on-duty driving hours both for the daily work shift and the 7- or 8-day tour of duty, as well as cheating time from the off-duty rest period so that they can put more miles behind them to achieve just-in-time delivery schedules. The recent report issued by the U.S. DOT OIG in April 2006 documented that HOS violations were one of the most common acts of regulatory noncompliance, accounting for 30 percent of all acute and critical violations.[130] Truck drivers have repeatedly falsified their logbooks on countless occasions because, among other reasons, shippers and receivers have forced them to wait long hours to load or unload freight. However, as emphasized in Section III, above, of this report, the agency has resolutely avoided mandating improved enforcement techniques that could reduce HOS violations by automatically recording the hours drivers spend behind the wheel. The agency is now several years overdue in complying with a

legislative mandate in the ICC Termination Act to adopt a regulation dealing with EOBRs.

Use of EOBRs by motor carriers would substantially reduce violations of HOS because vehicle operation would be monitored and the data captured, stored, and retrieved from on-board electronic modules. EOBRs combining monitored engine and transmission operation with Global Positioning Satellite (GPS) systems indicating vehicle location would reduce driving and off-duty rest period violations by preventing excess driving and work hours that can easily be concealed in manipulated records of duty status, commonly referred to as logbooks, and reduce violations by drivers who are forced to wait in long queues to load and unload freight and are importuned by shippers and receivers to log such time as off-duty. As a consequences, widespread use of EOBRs can reduce the amount of daily working and driving time that currently is illegally extended while also reducing overall, illegal working and driving hours during a tour of duty. In both cases, illegal working and driving hours almost always are accompanied by falsified records on the amount of off-duty rest time taken by drivers. EOBRs can therefore reduce fatigue and sleep deprivation among commercial drivers and enhance highway safety.

- **Inadequate Enforcement of Motor Carrier Safety Violations.**

FMCSA has several tools for overseeing motor carrier compliance with the FMCSR and for citing and correcting violations. These include initial safety evaluations of new entrant motor carriers, exit safety audits of new entrants, CRs of carriers with permanent operating authority, roadside inspections, and assessment of penalties which consist of fines and temporary or permanent suspension of motor carrier operating authority. This brief review of the quality of FMCSA oversight and enforcement will principally address the agency's use of CRs and civil penalties as illustrative of serious, chronic deficiencies in FMCSA's oversight and correction of safety standard violations. As pointed out earlier, the most recent OIG report of April 2006 showed that both the data accuracy, data completeness, violator identification, and penalty assessment efforts at FMCSA were still defective or inadequate and that the agency's enforcement actions were correspondingly compromised. Many violations are not recorded and many motor carriers are not targeted for either appropriate penalties or, when warranted, are not assessed maximum penalties.[131]

The selection of motor carriers for more roadside inspections and then subjecting some of them to full CRs may be an ultimately hopeless exercise at the threshold because SafeStat, the key instrument for determining which carriers are high safety risks, is not an accurate tool for enforcement purpose. As discussed in section IV above, recent investigative findings reveal that SafeStat may be incorrectly designating carriers as high risk when, in fact, they are not, while other carriers, particularly small carriers that do not fulfill data sufficiency requirements for inclusion in SafeStat, are overlooked by FMCSA for more intensive safety scrutiny. However, it appears that more roadside inspections, even apart from subsequent CRs for some carriers, can have a beneficial effect on compliance. The OIG in an oversight report sent to Congress on June 25, 2002, showed that Mexico-domiciled motor carriers reduced the out-of-service (OOS) rate of these vehicles over a five-year span in a direct relationship with the percentage of inspections that were performed.[132]

Compliance Reviews:

A central problem compromising agency effectiveness in overseeing motor carrier safety and reducing FMCSR violations is the annually low numbers and percentage of both roadside inspections and CRs. CRs are the targeted oversight application of the safety information that is provided by roadside inspections, crash data, and traffic violations information provided to FMCSA by the states. CRs arguably have both a corrective effect on motor carrier safety both by identifying high-risk carriers and seeking improvements in their operations and safety management practices, and by the deterrent effect of motor carriers avoiding poor safety regulation compliance for fear of undergoing CRs and even receiving poor safety ratings.

FMCSA has a statutory mandate from Congress inherited from OMC to assign safety ratings all motor carriers.[133] However, as pointed out in the OIG report of March 26, 1997, the agency in 1992 basically decided that it would no longer attempt to fulfill the statutory requirement to safety rate all registered interstate motor carriers.[134]

The implementing regulations for conducting CRs specifies criteria for assigning one of three safety rating categories to a motor carrier: Satisfactory, Conditional, Unsatisfactory.[135] The rating generated by a CR is based on four safety areas of evaluation primarily filtered through the criteria of SafeStat that assign weighted values to different areas of motor carrier operations, to driver and vehicle regulatory compliance, to motor carrier crash involvements, and to any violations of safety regulations and traffic laws and ordinances. The 1999 OIG report found that OMC was not sufficiently effective in ensuring that motor carriers comply with safety regulations and that the enforcement program did not deter noncompliance.[136] One of the primary reasons found by the OIG for this ineffective enforcement outcome was the paucity of CRs performed along with the low number and percentage of motor carriers receiving either Conditional or Unsatisfactory ratings. At the time the OIG report was released it was estimated that there were about 480,000 registered motor carriers,[137] so the figure of 6,473 CRs performed in 1998, the most recent year for which the OIG had data, represents only 1.3 percent of all registered motor carriers. Moreover, the OIG report found that of the carriers receiving CRs and safety ratings, only 1,870 – or only about 0.4 percent – had received less-than-Satisfactory ratings. Of this number, only 971 received a rating of Unsatisfactory. This means that only about 0.2 percent of all registered motor carriers were given Unsatisfactory safety ratings.

On its face, it is improbable that assigning Unsatisfactory safety ratings to only 0.2 percent of registered interstate carriers had a deterrent effect on about 480,000 registered motor carriers in 1998. Indeed, the OIG found that a deterrent effect was not even evident for the carriers that received either Conditional or Unsatisfactory safety ratings. For example, the OIG report pointed out that of the 1,870 carriers that received either Conditional or Unsatisfactory ratings, 650 had over 2,500 crashes from October 1, 1994, through September 30, 1998, resulting in 132 fatalities and 2,288 injuries.

Other organizations have called for improvements to the safety rating process. For example, the National Transportation Safety Board's (NTSB) current list of the Most Wanted Transportation Safety Improvements – Federal Issues[138] argues that the entire safety fitness regime operates too leniently through the use of criteria that do not result

frequently enough in motor carriers being shut down or drivers having their licenses revoked. NTSB points out that a pending Unsatisfactory rating occurs if two of six factors are found unacceptable, after which a general freight carrier has 60 days to correct the deficiencies or receive an OOS order that prohibits further operations. For hazardous materials (hazmat) and passenger motor carriers, the company has 45 days to correct the deficiencies or receive an OOS order.

However, NTSB regards this system as permitting unsafe carriers and drivers to continue to operate. NTSB instead recommends that if a carrier receives an Unsatisfactory rating for either the vehicle or the driver factor, that alone should be sufficient to trigger a pending Unsatisfactory rating. According to NTSB, this recommendation has been reissued annually since 1999 and FMCSA does not plan full implementation of any changes to its safety rating and other safety oversight processes until 2010.[139]

The 1999 OIG report on motor carrier safety oversight and enforcement stated that the number of CRs performed by OMC had declined by 30 percent since fiscal year 1995 even though there had been a 36 percent increase in the number of motor carriers operating over this period. It is clear that, despite a recent GAO report that FMCSA enforcement efforts have improved since that time,[140] little has changed in the overall agency effort to conduct CRs and assign safety ratings.

One of the basic reasons for GAO citing improved enforcement efforts is its claim that CRs have doubled in number from 6,400 in 1998 to 11,300 in 2004. However, there is a question about whether the GAO number is correct. FMCSA's own web site contains a National Summary for a recent year, 2004.[141] The Summary lists a total of 7,623 CRs conducted that year, of which 57.7 percent were found to be Satisfactory, 30.3 percent Conditional, and 9.2 percent Unsatisfactory. This number badly conflicts with figures on CRs conducted in 2004 in another FMCSA web site location. That same agency web site places the number of registered motor carriers for 2004 at 677,249, a figure which also differs from other figures provided by FMCSA.[142]

If one were to calculate the percentage of CRs performed in 2004 out of the total number of carriers listed for 2004 as registered with FMCSA, this barely exceeds one percent (1.13 percent) of registered carriers receiving CRs. Even if the larger figure of GAO, 11,300 CRs, is used, this still results in a figure of only 1.67 percent of motor carriers being safety rated in 2004. This larger figure still represents no significant difference from the poor showing of FHWA OMC shown earlier in our review that was documented in the 1999 OIG report. In fact, the 2004 CR percentages on the FMCSA web site for Conditional and Unsatisfactory safety ratings for the 7,623 carriers receiving CRs yield 2,310 carriers assigned a Conditional rating and 701 carriers assigned an Unsatisfactory rating.

Recall that the 1999 OIG report indicated that 971 carriers out of approximately 480,000 registered companies received an Unsatisfactory rating. This means that current efforts to take dangerous carriers out of operation have resulted in fewer assigned ratings of Unsatisfactory out of a much larger population of registered motor carriers, about 702,000 at present, one-third larger than in 1998.

Since the GAO study did not indicate whether these carriers assigned Unsatisfactory ratings in 2004 continued to have serious safety problems, as was found by the OIG in its 1999 report, it cannot be determined whether in some way this even smaller number and percentage of carriers deemed Unsatisfactory paradoxically represents overall improved motor carrier safety since 1999. If the figures on CRs posted on FMCSA's web site are to be relied upon, however, it is clear that not only has there been no improvement in conducting CRs and assigning Conditional and Unsatisfactory ratings since the figures provided in the 1999 OIG report, the agency on a percentage basis appears to be even further in arrears in using this powerful safety oversight and compliance tool. However, this condition appears to be irremediable given the decision of FHWA documented in the earlier1997 OIG report no longer to attempt to perform CRs and assign safety ratings to all registered motor carriers.[143] This was borne out by the July 2001 testimony of the IG who stated that more than three-quarters of registered motor carriers in the U.S. had not been subjected to a CR and were operating without any safety ratings.[144]

Despite some discrepancies when carefully comparing figures between the OIG and GAO report, and again with differing CR figures posted by FMCSA on its web site, there is little question that only a few thousand CRs are conducted each year out of the approximately 680,000 motor carriers that are currently registered with the agency, and the great majority of these do not result in Unsatisfactory ratings. In fact, even Satisfactory and Conditional, as Advocates recently demonstrated in its testimony before Congress in March 2006[145]

In light of these sustained, comprehensive criticisms by major federal oversight organizations of the inadequacies of FMCSA's approach to CRs, the agency has offered to revamp its approach to determining motor carrier safety fitness by actually de-emphasizing CRs rather than improve the process, make it more timely, and rate a much higher percentage of motor carriers. In fact, FMCSA admits that safety fitness determinations would be made independent of CRs. In a Federal Register notice of October 17, 2006,[146] FMCSA has proposed a new approach as part of its *Comprehensive Safety Analysis 2010 Initiative* in which the agency, using the LTCCS as guidance for this decision, acknowledges that safety indicators of motor carriers are difficult to identify and measure.[147]

One of these indicators is stated to be Fatigued Driving[148] that the agency would determine by reference to falsified driver logbook entries and entries on police accident reports. Given the widespread understanding that drivers regularly falsify logbook entries to conceal HOS violations and the fact that drivers are now allowed to drive and work up to 25 – 40 percent more hours in a work week than under the pre-2003 HOS regulation, this criterion clearly will dramatically underestimate the prevalence of fatigued driving among commercial operators. Also, even FMCSA itself has previously acknowledged that police accident reports badly underestimate the prevalence of fatigue among commercial drivers.[149]

As a further indicator that the agency has demoted CRs to a dramatically lower level of importance, despite pending Congressional direction to the agency to *increase*

the number of CRs,[150] FMCSA suggested at its November 17, 2006, Public Listening Session held in Washington, D.C., that the Conditional safety rating could be abolished so that the safety fitness rating would no longer consist of the three ratings of Satisfactory, Conditional, and Unsatisfactory, but would become only two ratings of Continue to Operate and Unfit. Given past performance of both FMCSA and FHWA to advance the interests of the motor carrier industry, it is probable that many current motor carriers tagged with Conditional ratings would instead be placed in the Continue to Operate category. This kind of "safety grade inflation" would mean that the traveling public using motorcoaches, as well as shippers, brokers, freight forwarders, and insurance companies would no longer have an agency-supplied red flag to warn them to carefully consider giving their business to companies that teeter on the edge of being declared Unsatisfactory under the current safety fitness rating system, but would have to rely on their own, independent evaluations of each carrier simply identified by the agency as allow to Continue to Operate.

FMCSA has acknowledged that it rates far too few motor carriers, that the SafeStat system is not providing accurate identification of which carriers are at risk of committing violations or having serious crashes, and that the safety fitness rating system consumes too much of the agency resources and does not provide meaningful or timely safety ratings. Essentially, the agency does not currently have a credible system for rating the safety of motor carriers and is not fulfilling its statutory mandate to rate the safety fitness of motor carriers.

Civil Penalties:

As noted earlier, the 1999 OIG report determined that OMC had shifted emphasis from enforcement to a more collaborative, educational, partnership-with-industry approach to safety. One of the apparent products of this de-emphasis of tough enforcement actions was a reduction through the late 1990s of the assessment of fines for violations, especially in the amounts of the fines. The OIG found that from fiscal years 1995 through 1998, settlements declined from 67 cents on the dollar to 46 cents. For 1998, the last year for which the OIG had information, the settlement percentage of the original assessed fines for the year was only 46 percent.

GAO in its December 15, 2005 report (2005 GAO report), however, claims that FMCSA has increased the average civil penalty per violation by more than 80 percent from 1998 to 2000, from $820 to about $1,500. However, the 2005 GAO report also states that FMCSA has modified its view of civil penalties, citing that they are only one tool to reach safety compliance. For example, the GAO report states that FMCSA is reducing penalties for first-time offenders and other carrier with less serious violations where the carrier agrees to come into compliance and make additional safety-related improvements. As a result, civil penalty amounts have dropped to $1,400 in 2004.

There is little question that the increased civil penalty assessments in evidence since 1999 is a direct result of resolute Congressional action to compel FMCSA to get tougher with violators. Section 222 of the 1999 MCSIA directed the Secretary of Transportation to "ensure that motor carriers operate safely by imposing civil penalties at a level calculated to ensure prompt and sustained compliance with Federal motor carrier safety and commercial driver's license laws."[151] This provision came on the heels of a

provision in TEA-21 specifically directing the Secretary to increase specific fine amounts.[152]

However, perhaps more important than the specific civil penalty amounts themselves is whether the payment of these fines affects motor carrier safety for the better or whether, as the OIG found in the 1999 report, motor carriers simply regard the penalties, regardless of the amounts currently levied by the agency, as a cost of doing business. The response to this question is clear from the 2005 GAO report: GAO could not determine whether the payment of civil penalties has a salutary effect on motor carrier safety. GAO found that FMCSA has no system for measuring the effect of civil penalty payments on motor carrier compliance with the FMCSR, and, therefore, it lacks the information about effectiveness to make policy decisions about its use of civil penalties. Despite the fact, as GAO indicates, that civil penalties comprised 81 percent of FMCSA's enforcement actions against motor carriers following CRs, FMCSA does not know whether or how much they are increasing motor carrier safety compliance.

Unfortunately, it appears that FMCSA's effort to penalize motor carriers for violations has waned since the last major U.S. DOT OIG report in 1999. In a report released in April 2006,[153] the OIG stressed that many motor carriers were escaping the payment of maximum penalties because FMCSA was slow to implement the OIG's recommendations from its 1999 audit of the agency. As the new OIG report stresses, although FMCSA issued an initial "three strikes" policy in September 2000, it did not properly implement the policy and did not provide sufficient notice of the policy to the motor carrier industry. During a 4-year period, FMCSA enforced maximum penalties against only 146 motor carriers. Moreover, the OIG identified 71 other motor carriers that repeatedly violated safety regulations, especially hours of service requirements, but nevertheless not assessed maximum penalties. In addition, because of the delay in strengthening the three strikes policy until December 2004, according to the OIG, the six-year timeframe for accruing violations was delayed by up to 4 years, resulting in motor carriers that committed violations from September 2000 to March 2004 essentially given a "clean slate" because violations actually committed during these four years will not count in identifying a pattern of violations. [154]

In addition, FMCSA's current violator policy is allowing motor carriers to escape paying maximum fines. The agency often omits specific violations from the Notice of Claim filed with the charged motor carrier.[155] Since FMCSA's policy is not to consider any undocumented violations for identifying a pattern of violations, repeat violators of the same regulation may nevertheless not result in assessment of the maximum penalty. Despite several hundred motor carriers found by the OIG to have repeatedly violated either hours of service requirements or drug and alcohol regulations, or both, only six percent of the offending motor carriers received the maximum penalty.[156] The OIG points out that this is a big loophole that allows hundreds of motor carriers to repeatedly violate important safety regulations without being exposed to maximum penalties. FMCSA needs to close this loophole to deter violations of its safety regulations, especially the hours of service regulation which is the most frequently violated, accounting for 30 percent of all acute and critical violations.

Taken together, there are no quantitative measures of effectiveness in FMCSA for determining whether CRs and civil penalties result in demonstrable improvements in motor carrier safety compliance and actual, on-the-road operational motor carrier safety.[157] The 1999 OIG report followed up the assignment of Conditional and Unsatisfactory ratings to determine whether these less-than-Satisfactory ratings produced safer carrier operations. Although the OIG report does not characterize its findings in this regard, it was clear from the narrative that the authors were surprised that these poor safety ratings still resulted in a substantial number of crashes – about one-third of the carriers receiving Conditional or Unsatisfactory safety ratings had 2,500 crashes over the next four years. Unfortunately, GAO did not perform any comparable follow-up assessment of the safety experience of the carriers assigned less-than-Satisfactory safety ratings for the 2005 GAO report. Similarly, although the recent OIG report of April 2006 found that motor carriers were repeatedly violating the same safety regulation at least three times and were also escaping assessments of maximum fines for other violations, the OIG investigators did not analyze whether maximum fine would have prevented crashes, although they did determine that hundreds of motor carriers that had committed repeated violations continued to be involved in thousands of crashes, resulting in over 100 fatalities and over a thousand injuries.[158]

- **The Motor Carrier Safety Assistance Program.**

The Motor Carrier Safety Assistance Program (MCSAP) is a cornerstone of FMCSA efforts to effect safety regulatory compliance and reduce crashes of large trucks and motor coaches. This grant-in-aid program was first authorized in the Surface Transportation Assistance Act of 1982[159] (STAA) and subsequently reauthorized in successive multi-year surface transportation legislation including the most recent authorization bill, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).[160] Congress intended for the U.S. Department of Transportation's motor carrier safety effort to draw upon the additional expertise and personnel of the states in order to augment and complement federal motor carrier safety oversight and enforcement efforts, primarily in the area of assisting in conducting CRs and performing roadside inspections to improve motor carrier vehicle and driver safety, and to deter violations. The original authorization contained certain eligibility requirements for financial assistance, including an agreement by each state to adopt and enforce safety regulations that are judged compatible with the FMCSR and the Hazardous Materials Regulations (HMR).[161]

MCSAP has evolved over the years into a program that now is significantly different than originally set forth in 1982. This is due, in large part, to oversight and investigation reports issued by both the U.S. DOT OIG and GAO. There was an especially intense series of oversight reports issued in quick succession by the OIG during fiscal year 1994 whose findings led to the major changes in MCSAP later enacted in TEA-21.[162] In general, these five reports determined that there were serious inadequacies and a lack of effectiveness of FHWA's controls for administering the MCSAP program that were accompanied by specific recommendations on state roadside inspection activities and for the grant allocation formula.

TEA-21 reauthorized funding for MCSAP, but also added new provisions that revised the purpose and operation of the program. In essence, the legislative amendments

in TEA-21 re-directed MCSAP into a more performance-oriented grant program.[163] These changes were intended to foster closer coordination and cooperation between federal and state jurisdictions, but also specified new goals to be achieved by each state MCSAP program. TEA-21 required the states to implement performance-based CMV safety programs by fiscal year 2000. For example, the emphasis of state programs was shifted from measuring success by the number of roadside inspections performed to "output" measures of CMV safety, particularly measurable reductions in crashes, injuries, and fatalities.[164]

TEA-21 also mandated several other requirements that states must fulfill and demonstrate in their Commercial Vehicle Safety Plans in order to qualify for basic MCSAP funding as well as to apply for supplementary incentive funds.[165] Further changes have been enacted for the MCSAP program in SAFETEA-LU.[166] One significant change that should be mentioned is the legislative divorce of border activities program funding from MCSAP and its operation and funding instituted as a separate effort.[167]

The OIG has not performed an in-depth audit of MCSAP since the reports issued in 1994. However, the OIG implicated MCSAP in its testimony and ensuing comprehensive report in 1999 demonstrating that the FMCSA enforcement effort had faltered.[168] In testimony before the U.S. House of Representatives in February 1999,[169] the OIG emphasized that the purpose of MCSAP was not only to assist the states to conduct their own CMV safety programs and conduct enforcement actions, but also to provide resources explicitly to augment the OMC work force to improve its efforts to secure compliance with the FMCSR and to reduce CMV crashes. The OIG pointed out that MCSAP funding had increased by leaps and bounds, from only $8 million in fiscal year 1984 to $90 million in fiscal year 1999, yet both roadside inspections and CRs were both reduced from previous years. The OIG has also recently confirmed in its February 2004 audit that MCSAP was still hobbled by incomplete and inaccurate crash and inspection data reported to FMCSA by the states.[170]

Most recently, GAO has subjected MCSAP to a searching inquiry in the 2005 GAO report.[171] That report found that FMCSA administration of MCSAP was very poor and that several states have not complied with all of their obligations under MCSAP, including appropriately timely and accurate data collection and transmission. More disturbing was GAO's conclusion that once again, in another major area of agency program activity, FMCSA had no meaningful and reliable quantitative measures of how well or badly states were performing with the use of MCSAP funds. GAO also found that MCSAP oversight in several major areas was inadequate, and that the agency has not appropriately monitored the development of state safety plans for receiving federal funds.

For example, FMCSA has not completed its MCSAP oversight reviews in the past three years. This is crucial to both the success and validity of the program because the states must adequately demonstrate to FMCSA how proposed CMV safety goals and actions advance the agency's mandated safety goals. It is also important because FMCSA awards additional incentive grants to states over and above basic funding allotments for an approved CMV safety plan. These incentive funds are awarded for states to reduce fatalities, lower their CMV fatal crash rates, perform timely uploading of

accurate crash and inspection data, and check the status of CMV driver licenses, including CDLs.

However, in the 2005 GAO report, GAO could not determine in 2004 whether states met the 61 separate safety goals in their submitted safety plans, and it found that of the remaining goals they could measure, 23 were substantially met and 16 were not.

GAO also determined that FMCSA did not thoroughly conduct three important oversight activities to determine state progress towards safety goals:

(1) FMCSA did not carry out planning activities for 2004 MCSAP grants to ensure that each plan contained all key elements of quantifiable national and state goals, performance measures, and evaluations. Agency service center meeting with states to improve their safety plans were convened by only one of the 4 service centers.
(2) FMCSA division offices did not follow program guidance to ensure that state safety plans incorporate features to measure state performance, including no quantifiable goals.
(3) FMCSA division offices did not adequately monitor state progress because they did not obtain information crucial to determining whether state goals were met.

Furthermore, as alluded to earlier, FMCSA has not completed a significant number of MCSAP oversight reviews, which are required by internal agency policy to be conducted every three years, including division offices reviewing state grantees, service centers reviewing state division offices, and FMCSA headquarters (HQ) reviewing the service centers. FMCSA division offices, for example, had reviewed only 19 of 56 grantees[172] over the previous three years. Those reviews that were completed showed incompatibility of state motor carrier safety regulations with federal regulations, missing quarterly reports, and a failure to carry out comprehensive annual evaluations of state safety plan goals. Furthermore, in the majority of division office reviews that were conducted, FMCSA service centers found several gaps such as (a) not tracking, recording, or retaining information on monitoring activities; (b) not providing feedback to states about monitoring findings; (c) not following through to ensure improvements were made, or tracking/recording corrective actions needed or those that were taken; (d) not conducting any grantee reviews.

Also, FMCSA resources devoted to adequate administration of MCSAP have declined. FMCSA HQ staff devoted to MCSAP have steadily decreased over the past 11 years from 11 full-time employees in 1995 to only four in 2005. As a result, the 2005 GAO report found that FMCSA HQ has not shared "best practices" with division offices, such as (1) developing and using an automated system for monitoring state grant activities; (2) convening regular meetings with states: (3) developing a detailed quarterly report showing progress towards safety goals; (4) hiring an administrative grants manager.

GAO indicated that FMCSA has formulated a new plan as of December 2004 for a state grantee review program to be carried out by a team of division office, service

center, and HQ staff along with contractors, and the agency has piloted the review program in 4 states with full implementation expected in the 1st quarter of FY 2006 (the fall of 2005). The plan is projected to operate on a four-year cycle.

Because of the pervasive and systemic deficiencies found by GAO both within FMCSA and in the states in effecting compliance with MCSAP grantee requirements and performing careful oversight, GAO recommended that the Secretary should direct the FMCSA Administrator to:

(1) assess whether improved performance reviews of state safety activities are meeting the agency's intended safety goals;

(2) incorporate MCSAP oversight as a part of the effectiveness study of division offices, and;

(3) assess the oversight actions of service centers.

Finally, in addition to all these individual problems and failures, the MCSAP grant program suffers from another serious flaw that is part of an endemic pattern found in numerous other FMCSA efforts: a lack of quantitative and objective measures by which the agency can determine whether the program is succeeding in improving state practices and motor carrier safety.

Throughout every enforcement and oversight issue reviewed in this Report, FMCSA has no validated quantitative measures of effectiveness for determining whether any of its programs and actions actually reduce CMV safety regulatory noncompliance and reduce both the number and the severity of CMV crashes with their commensurate deaths and injuries. It is evident up to this point that the especially low numbers of CRs that have been performed have not resulted in improved CMV safety or deterred violations.[173]

In fact, a follow-up evaluation by the OIG found that motor carriers receiving less-than-Satisfactory safety ratings still had high rates of crashes with injuries and fatalities. Further, both GAO and OIG could not determine whether higher civil penalty assessments deter violators or produce improved CMV safety. Similarly, the agency has no data to show that motor carriers are deterred by even the prospect of CRs from engaging in FMCSR violations. Most pointedly, even FMCSA itself admitted to GAO while the latest GAO report was being prepared that the agency is scaling back the number of annual roadside inspections to pre-2000 levels because an analysis of effectiveness concluded that the inspection program was not producing annual increases in industry-wide safety regulation compliance.[174] Accordingly, there does not appear to be an confirmed, measurable connection between the agency's and the states' level and quality of effort in promoting improved CMV safety with the specific enforcement policies and funding levels used by FMCSA and by the states through MCSAP. This current appraisal confirms the similar, discouraging findings of the July 2000 GAO oversight report, *Commercial Motor Vehicles: Effectiveness of Actions Being Taken to Improve Motor Carrier Safety Is Unknown.*[175]

It must be emphasized that FMCSA's conclusion that there is no connection between the intensity of state inspection efforts and safety compliance is directly contradicted by the state of California's border inspection experience. The DOT OIG has repeatedly found that California, which has the best border inspection program with the strongest level of effort, the highest percentage of inspections performed on transiting Mexico-domiciled motor carriers, and the largest investment in facilities and personnel for the number of foreign carriers inspected, produced the lowest level of Mexican truck OOS orders of the four southwestern border states. The OIG found that compliance with federal and state motor carrier safety regulations was directly commensurate with the quality of the inspection program, with California's OOS rate for Mexico-domiciled motor carriers pegged at just 28 percent in 1997, but Texas, with the poorest inspection program,[176] produced an astounding rate of 50 percent OOS orders.[177]

The conclusion to be drawn is unavoidable: despite increased regulatory authority and far higher levels of funding than ever before, including MCSAP funds for the states, truck crash fatalities are increasing on FMCSA's watch and widespread noncompliance with the FMCSR continues, including unexplained, widespread nonconformity by the states with the FMCSR as a condition for receiving federal funds for state motor carrier oversight and enforcement programs.

- **The Southern Border Zone and NAFTA: Motor Carrier Safety Oversight and Enforcement Is Incomplete and Has Uncertain Safety Effectiveness.**

The history of foreign commercial motor vehicle operations in the southern border area of the United States is long and intricate. The fundamental concern that has engaged Congress, truck and bus safety organizations, and government oversight offices is to what extent the U.S. should be opened to the unimpeded, long-haul interstate transportation of freight and passengers by motor carriers domiciled in and operating out of Mexico.

Border Zone Operation:

Until 1982, Mexico-domiciled motor carriers operated mainly in a narrow strip along the southern borders of the four southwestern states contiguous with Mexico.[178] At that time, Mexico-domiciled CMV operations in the U.S. centered almost entirely on the short-haul transport of Mexican citizens back and forth across the border to pursue jobs in the U.S., limited charter bus services, or the movement of freight by truck into the U.S. These short-haul Mexican truck operations are often referred to as "drayage." With respect to freight transportation, Mexican truck drayage operations interlocked with regional and long-haul interstate U.S. trucking firms. Few Mexico-domiciled motor carriers operated beyond the border zones of the four states, and even fewer operated commercially in the rest of the U.S.[179] Mexico-domiciled drayage trucks generally handed off their loads in the border zones to U.S. motor carriers to transport throughout the U.S., and they also obtained freight to transport back ("back-hauls") across the international border from the U.S. into Mexico.

In 1982, Congress imposed a legislative moratorium on granting operating authority to both Mexican and Canadian motor carriers seeking to operate in the U.S.[180] Congress provided for Presidential modification of the moratorium in legislation. Although the moratorium was lifted almost immediately for Canadian motor carriers,[181] it

remained in effect for Mexico-domiciled motor carriers and restricted them to operating only within the confines of the border zone.

NAFTA:

In December 1992, Canada, the U.S., and Mexico ratified the North American Free Trade Agreement (NAFTA).[182] NAFTA established a schedule for liberalizing certain restrictions on investment in truck and bus services and contained language promoting open, unfettered trade across all three countries, including free movement of CMVs transporting freight and passengers, as well as efforts to harmonize differing laws, policies, and regulations governing major areas of trade. Harmonization covered numerous topics, including tri-national evaluation of the differing commercial freight and passenger transportation requirements between the U.S. and Canada and Mexico.[183] Emphasis was placed primarily on harmonizing different CMV size and weight regulations between the three countries, including gross weights, axle weights and spread, lengths, and configurations. Commercial driver licensure was another – and contentious – topic that was considered for harmonization.

In fact, even before NAFTA was formally agreed to, the U.S. and Mexico reached an understanding that harmonized the acceptance of U.S. CDL by Mexican authorities, and the Mexican Licencia Federal de Conductor (LFC) by U.S. authorities. Despite opposition by CMV safety organizations, FHWA issued a final rule in July 1992 – several months prior to NAFTA ratification – declaring, without prior notice and comment, that the U.S. and Mexican commercial driver licenses were recognized as equivalent based on a Memorandum of Understanding between Mexico and the U.S.[184] CMV safety organizations had previously documented the large disparities between the two commercial licensure systems and the correlative lack of documentation by Mexico of commercial driver crash, violation, and conviction records of LFC holders.[185]

Although one of the key features of NAFTA is the unilateral right of signatory countries to maintain unique features of law and regulation that are represented as necessary by each nation to ensure the health and safety of its citizens, and to protect its environment,[186] it became clear very quickly that both U.S. business, including the trucking industry, as well as advocates in both the executive and legislative branches of government, were eager to realize the economic benefits of lowering both tariff and non-tariff based trade barriers among the three countries. NAFTA was invoked immediately as the justification for eliminating the southern border operating restrictions on Mexico-domiciled motor carriers and allowing them unfettered access to the remainder of the U.S., as well as intercontinental access to Canada, as long as U.S. requirements for truck and bus safety design, CMV freight (including hazmat) and passenger operations, and driver qualifications were adhered to.

The requirements of NAFTA set off an intense period of scrutiny of the Mexican motor carrier industry, with sustained efforts to measure whether Mexican trucks and buses, drivers, and operating practices were equivalent in safety to those required for U.S. domestic freight and passenger commercial transportation. Truck and bus safety organizations and members of Congress immediately began reviewing whether Mexico-domiciled motor carriers were prepared to achieve the CMV safety design requirements and meet the operational and driver safety requirements issued by the DOT. Questions

were raised about Mexico-domiciled operating safety, safety equipment and design, driver HOS, data system accuracy and completeness, drug and alcohol testing, and insurance coverage in Congress, the CMV safety community, and in government oversight reports. The basic concerns were how to ensure that Mexico-domiciled motor carriers at least met U.S. minimum standards in all these areas, and how U.S. officials could determine what the crash, violation, and driver license records were in Mexico.

There also was the concern over whether Mexican drivers and vehicles reaching the U.S. border seeking entry had benefited from equivalent safety oversight in Mexico including the equivalent of our CRs and roadside inspections. A strong safety culture buttressed by good government oversight and regulation in Mexico would provide a platform for confidence in the safety of U.S. operations of Mexico-domiciled motor carriers and would help considerably to reduce the burdens of U.S. CMV enforcement officials to detect non-complying motor carriers, trucks and buses, and drivers.[187] Safety organizations were especially concerned whether LFC holders were held to Mexican HOS limits that ensured that Mexican drivers entering the U.S. were not already highly fatigued and sleep-deprived, particularly when full interstate access was permitted that would encourage long-haul truck transport from deep in Mexico even before entering the U.S. If Mexican truck drivers were not restricted to a reasonable regime of work, driving, and off-duty rest time, compliance with U.S. HOS limits meant little if these drivers already were entering the U.S. as high safety risks to themselves and everyone else sharing the roads with them. However, an early GAO report documented that safety inspection and oversight of both commercial drivers and CMVs was very poor in Mexico and that comparable safety regulations, such as HOS limits, did not even exist.[188]

NAFTA provided for complete border opening to commercial traffic by December 18, 1995. However, on that same day, the President postponed implementation of NAFTA cross-border interstate trucking privileges for Mexico-domiciled motor carriers based on Administration concerns both for highway safety and environmental issues involving diesel emissions.[189] The U.S. DOT Secretary subsequently announced that Mexican trucks would continue to have access only to the four southwestern states' commercial zones until U.S. safety and security concerns were satisfactorily addressed.

National CMV safety organizations were particularly concerned with powerful special interests applying NAFTA as leverage for increasing truck size and weight limits in the U.S. to more nearly accord with those prevailing in both Canada and Mexico.[190] Truck and bus safety organizations repeatedly communicated their concerns about the serious threat of increased crashes and low levels of safety regulation compliance by Mexico-domiciled motor carriers entering the U.S. to members of Congress, to government oversight organizations such as the DOT OIG and the GAO, to media representatives, and to NAFTA committees charged with harmonization efforts to rationalize differing U.S., Canadian, and Mexican CMV size and weight limits.[191]

Border Oversight Reports:

In the middle 1990s, a long series of detailed oversight investigations with reports conducted primarily by the DOT OIG and the GAO was launched. Overall, these reports painted a dismal picture both of Mexico-domiciled motor carrier safety and of the poor

quality of preparation and level of readiness of U.S. federal and state enforcement officials to handle the predicted surge of Mexico-domiciled trucking and bus companies applying for operating authority to transport freight and passengers throughout the U.S. and into Canada.[192]

The earlier reports on border safety preparedness and Mexico-domiciled motor carriers safety brought to light a number of problems, including the fact that Mexican trucks were experiencing almost double the OOS rate of U.S. trucks; that many drivers did not even possess valid LCF, the Mexican commercial driver license; trucks were often in very poor condition, with broken chassis frames and suspensions, and also violated several other vehicle safety requirements; hazmat was improperly stored and loaded, and hazmat placards were often missing or incorrect; and U.S. truck axle and gross weight limits were often violated. In addition, the 1996 GAO report pointed out that infrastructure damage from Mexican trucks was a serious concern due to the excessive weights carried by the major configuration used by Mexico-domiciled motor carriers, the "18-wheeler" tractor-trailer combination. CMV safety organizations also pointed out that even compliant Mexican combination trucks inflicted far more serious damage on U.S. highways than U.S. trucks even within federal and state gross and axle weight limits because the suspension system on Mexican vehicles was designed for extremely rugged terrain comprising the great majority of Mexican highways which are not paved, hard-surfaced facilities.

Subsequent reports in the late 1990s and at the start of the new century, especially those issued by the DOT OIG, emphasized that actions in preparation for opening the U.S.-Mexico border to Mexican long-haul trucks did not provide the assurance that trucks entering the U.S. would comply with U.S. safety regulations. Although some efforts were made by DOT to augment the number of federal inspectors assigned to the 28 border crossing points of the four border states, these initiatives were still clearly insufficient. Moreover, states regarded the NAFTA inspection issue as a national responsibility, not just a border state burden, and so the 4 southwestern border states were unwilling to devote or reallocate limited state resources to intensify Mexican CMV oversight and inspection.[193]

The inevitable result was that, although there was some progress in improved Mexican truck and driver inspection results, Mexico-domiciled motor carriers were still experiencing higher OOS order rates than both U.S. and Canadian motor carriers. In general, Mexico-domiciled motor carrier OOS rates during this period hovered between 45 and 50 percent, while U.S. carriers had about a 25 percent rate and Canadian carriers a 17 percent rate. Also, CMV inspection infrastructure was poor on the U.S. side of the border, with few weigh scales to determine whether Mexican trucks were entering the country illegally overweight, major crossings without separate inspection facilities where full (Level 1) driver and vehicle safety inspections could be performed, and an inadequate number of both state and federal inspectors to be able to inspect a reasonable percentage of trucks crossing from Mexico both to detect safety violations and to provide a deterrent effect to noncompliance.[194]

These and other concerns about CMV safety at the southern border prompted Congress to take action to respond to the shortage of resources and programs to oversee

and inspection Mexico-domiciled CMV safety compliance with U.S. laws and regulations. TEA-21 was enacted with several major provisions directly responding to the poor inspection effort at the U.S.-Mexico border, including a provision allowing up to five percent of MCSAP funds to be directed to border enforcement efforts over the succeeding 6 fiscal years 1998 through 2003.[195] TEA-21 also included an explicit mandate to the Secretary of Transportation to review the qualifications of foreign motor carriers seeking operating authority in the U.S., including a specific review of each applicant foreign-domiciled motor carrier's likely capability to comply with all applicable laws and regulations for commercial transportation in the U.S.[196]

Unfortunately, the DOT OIG found more violations by Mexico-domiciled motor carriers following enactment of TEA-21. The November 1999 report discovered numerous, illegal operations taking place beyond the border zones by carriers with only drayage operating authority due to the moratorium on interstate operation beyond the border zones.[197] Roadside inspection data revealed many Mexican trucks operating not only beyond the commercial zones within the four border states, but also in 20 other states outside the 4 southwestern states.[198] In that same report, the DOT OIG found that 900 of the 8,400 Mexico-domiciled motor carriers listed in the Insurance and Licensing database had no U.S. DOT-issued identification number, and in the operating authority database itself 700 carriers had no listed identification number. The OIG also found Mexico-domiciled motor carriers listed U.S. owners but in most cases this could not be verified.

The DOT OIG investigation uncovered not only widespread violations of registration, identification numbers, and illegal operation beyond the border zones, but the inspections of carriers engaging in illegal operations also showed multiple, serious safety violations such as no licenses, no medical certificates, no HOS logbooks, and noncompliant safety equipment. The OIG also found that there was very little enforcement of these violations by FHWA, including no check of certificates of registration by inspectors except in California.[199] Although a few enforcement actions were taken against the Mexico-domiciled motor carriers operating within the border states but outside the commercial zones, no enforcement actions were taken in fiscal year 1998 by FHWA against the 53 carriers operating illegally in the rest of the U.S. without operating authority. Moreover, in those few cases where enforcement actions were taken, the fines were inconsistently administered and, when imposed, were often low amounts.[200]

The DOT OIG determined that both federal and state – except for California – enforcement presence was highly inadequate. A subsequent GAO study also found that the thin federal enforcement ranks were also being inefficiently used, with virtually no automation for transmitting information. Processes used by U.S. inspection agencies, including both Customs and FHWA, at the southwest border involved literally moving paper by hand from agency to agency within the federal inspection compound.[201] A follow-up, interim report by the DOT OIG again found inadequate inspection resources marshaled to adequately inspect Mexico-domiciled motor carriers.

Nevertheless, in February 2001, the U.S. stated that it would comply with its NAFTA obligations and allow Mexico-domiciled motor carriers to operate beyond the

commercial zones by January 2002. In clarifying the action the Secretary of Transportation stated that ". . . every Mexican firm, vehicle and driver that seeks authority to operate in the U.S. – at the border or beyond – must meet the identical safety and operating standards that apply to U.S. and Canadian carriers"[202]

By mid-2001, despite a NAFTA tribunal ruling that the U.S. was in breach of its treaty obligations,[203] FMCSA officials had not completed an implementation plan to ensure safe opening of the U.S.-Mexico border for interstate operations of Mexican carriers. Also, the DOT OIG found that no new inspection facilities had been inspected since its 1998 report. The only permanent inspection facilities were situated at two locations in California, but none existed at the other 25 recognized crossing points which, moreover, had highly inadequate conditions for inspecting Mexico-domiciled CMVs.[204]

The concern in Congress over motor carrier safety at the southern border continued to mount as a result of these oversight reports by the OIG and GAO, along with independent assessments by national safety organizations,[205] documenting the poor and often belated administrative response of the DOT to the growing number of Mexico-domiciled motor carriers seeking entry at the southern border. All of these reports and assessments concluded that more intense oversight with more frequent inspection of Mexican motor carriers was needed, along with confirmation of their legal operating authority and conformity to all applicable U.S. safety laws and regulations. Truck safety organizations and the DOT OIG criticized the formal effort of the FMCSA to issue regulations governing Mexico-domiciled motor carrier applications for operating both within the border zones and in unrestricted interstate commerce.

These oversight findings showed that the agency's plan for conducting a safety application and monitoring system was highly inadequate. FMCSA was prepared to accept uncorroborated certifying statements from Mexico-domiciled motor carriers about their legal status as incorporated companies, their safety management practices, and their recordkeeping capabilities and intentions.[206] Safety organizations and the OIG both called upon FMCSA to revise the proposed rules for the application process and for the safety monitoring process.[207] At the time there was no reliable information about Mexico-domiciled motor carrier safety conditions. A prime reason for this was the fact that Mexico itself had no accessible data on motor carrier history, vehicle and driver violation rates, Mexican driver commercial licenses, as well as no safety rating systems, no implemented system of roadside inspections, no enforced safety standards, no national registry of driver drug and alcohol test results, and no sources of reliable information about Mexican motor carrier safety management practices and their quality.[208]

The OIG issued yet another oversight report in September 2001, emphasizing the need again for FMCSA to evaluate each applicant Mexican motor carrier prior to allowing it to operate in the U.S. rather than issue conditional operating authority solely on the basis of a written application with the intention of conducting safety reviews long after cross-border operations began.[209] The OIG also found that few permanent inspection facilities were in place and that FMCSA had still not integrated its federal inspection personnel and their activities with those of the border states. By the time of the ensuing OIG oversight report of December 2001 that reach the same conclusions, Congress was moving quickly to ensure that southern border motor carrier safety was

raised to a higher level by mandating specific safety actions for FMCSA implementation. National CMV organizations provided constant assistance and information to ensure that the legislative process comprehensively addressed each issue that would improve cross-border CMV operations.

The Murray-Shelby Amendment:

By the summer of 2001, Congress was convinced that the announcement in February 2001 that the southern U.S. border would be opened soon to long-haul, interstate commercial transportation by Mexico-domiciled trucks was not accompanied by sufficient commitment of both federal and state motor carrier oversight resources. Congress began to move more quickly during the summer as a result of the subsequent announcement by the President on June 5, 2001, that the border restrictions on interstate movement by Mexico-domiciled motor carriers should be lifted. On December 18, 2001, the President signed the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 2002 (FY 2002 DOT Appropriations Act)[210] which provided $140 million to fund federal and state border safety operations at the U.S.-Mexico border. The legislation included Section 350, an amendment sponsored by Senators Patty Murray (D-WA) and Richard Shelby (R-AL), which imposed numerous highly specific safety requirements and processes that FMCSA had to comply with prior to permitting any Mexico-domiciled motor carrier to operate beyond the border zones.

In addition, the legislation directed the DOT OIG to play a major oversight role in verifying that these preconditions to Mexican long-haul truck commerce were fulfilled. Section 350 required the OIG to conduct a comprehensive review of border operations within 180 days of enactment to verify that these safety requirements and processes were in place. In turn, the Secretary had to address the OIG's findings and certify in writing that the opening of the border did not pose an unacceptable safety risk.

The list of specific actions to be undertaken by FMCSA is detailed and intricate, and Section 350 should be consulted for a complete understanding of all requirements.[211] The major provisions of Section 350 require that FMCSA must:

- ► perform a safety evaluation of each Mexico-domiciled motor carrier at its place of business in Mexico prior to granting provisional operating authority, except for carriers with 3 or fewer CMVs. However, 50 percent of all safety evaluations must be performed onsite.[212] On-site inspections also must cover at least 50 percent of estimated truck traffic in any year.
- ► interview each Mexico-domiciled motor carrier's officials for the purpose of reviewing safety management controls and to evaluate any written safety oversight policies and practices.
- ► perform a CR for every long-haul carrier with provisional operating authority 18 months later. Each carrier must gain a Satisfactory rating before being granted permanent operating authority. Any carrier receiving less than a Satisfactory safety rating will have its operating authority revoked.
- ► review available data on each applicant motor carrier in order to determine whether each carrier is able to comply with the FMCSR and the HMR.
- ► verify the legitimacy of each LFC held by a Mexican driver.

► ensure that every Mexico-domiciled motor carrier provide proof of insurance through a U.S. licensed insurance company.
► ensure that there is a Mexican driver drug and alcohol testing program consistent with current requirements in 49 CFR Pt. 40.
► assign each long-haul carrier a distinctive, differentiating U.S. DOT number so that inspectors at the border can easily distinguish them from the Mexico-domiciled carriers operating only with the border zone.
► require safety inspectors to verify electronically the status and validity of the licenses of commercial drivers of Mexico-domiciled long-haul trucks.
► require state inspectors who detect violations of the FMCSR to enforce them or to notify federal inspectors that the violations have occurred.
► require a valid inspection decal showing that a full, Level 1 inspection of both the vehicle and driver of each Mexico-long haul truck has been performed. The decal is good for 90 days and must be renewed to continue long-haul operations. The 90-day inspection intervals do not apply to border-zone-only drayage trucks.
► ensure that Mexico-domiciled motor carriers of any kind (drayage or long-haul) enter the U.S. only at a recognized commercial border crossing when inspectors are on duty and where there are adequate facilities to perform safety inspections and to place unsafe vehicles and drivers OOS.
► equip each border crossing with scale suitable for weight enforcement; further, it must equip five of the 10 crossings with the highest volume of commercial traffic with Weigh-In-Motion (WIM) scales and conduct a study to determine which other crossings should also have WIM scales.
► publish several rulemaking actions and issue several policies. For example, FMCSA must publish a rule establishing minimum requirements for motor carriers to ensure that they are knowledgeable about federal safety standards and adopt a policy that any foreign motor carrier that has been found to have operated illegally in the U.S. will be barred.

The FY2002 DOT Appropriations Act also required that Mexico-domiciled motor carriers carrying placardable quantities of hazmat shall not operate beyond the border zone until an agreement was reached between the U.S. and Mexico that required Mexican drivers to meet substantially the same requirements as U.S. drivers for carrying hazmat.

The OIG published the results of the first audit of how well compliance had been effected with these requirements in June 2002.[213] According to the report, progress had been made to comply with the listed requirements but, as yet, no on-site evaluations had been performed. With respect to the other requirements in Section 350, the report found that FMCSA had not yet completed the required inspection facilities for conducting full Level 1 inspections; had not yet hired and trained all required safety inspectors and safety auditors; and had not yet ensured that all federal and state inspectors had electronic access to Mexican and U.S. databases for drivers, vehicles, and motor carriers.

However, the OIG report did conclude that the safety monitoring system for Mexican carriers would be fully operational by July 1, 2002,[214] and that the WIM scales requirement had been met. In addition, although Section 350 requires FMCSA to ensure that Mexican carriers comply with U.S. HOS requirements, the OIG could not verify that

that effort will be fruitful until Mexican long-haul carriers actually operate outside the border zone.[215]

In addition, the OIG found that the Mexican government was developing truck safety regulations and claimed to be taking steps to enforce new safety requirements, but the OIG concluded that these recent efforts were incomplete and, moreover, it was too early to assess their effectiveness. The June 2002 report did conclude, however, that Mexican databases on commercial driver licenses and vehicle registration were sufficiently accurate.

The OIG also recommended that the Secretary move beyond the statutory requirements of Section 350 and also implement additional efforts to establish inspection goals; improve data to determine whether those safety goals were being met for both drayage and long-haul Mexican trucks; forge agreements with states and other federal agencies on inspection facility location, staffing, and operation; and develop a specific timetable for when these actions would be completed.

Finally, in its June 2002 report, the OIG found that the increased intensity of border inspections appeared to have reduced the OOS order rate for Mexican motor carriers from an overall 44 percent in fiscal year 1997 to 34 percent in fiscal year 2001. The report noted that the OOS rate for U.S. motor carriers had been about 24 percent over the previous few years.

The OIG has conducted two more follow-up audits of FMCSA compliance with Section 350 requirements, one released on May 16, 2003, and the other on January 3, 2005.[216] These followed on the heels of the certification issued by the Secretary on November 22, 2002, that authorizing Mexico-domiciled long-haul operations throughout the U.S. did not pose an unacceptable safety risk. Several days later, on November 27, 2002, the President finally lifted the moratorium on granting operating authority to Mexican motor carriers to conduct interstate operations. The President further authorized the Secretary to act on applications for operating authority from Mexican motor carriers to provide bus and truck services throughout the U.S.

The May 16, 2003, audit report confirmed the findings of the OIG report issued a year-and-a-half earlier: FMCSA had completed virtually all actions necessary to meet Section 350 requirements, including hiring and training inspectors, establishing inspection facilities, developing safety processes and procedures for Mexico-domiciled motor carrier applications for operating authority, and implementation of the safety monitoring process. The report also certified again that Mexican databases were accurate and accessible. However, a worrisome holdover from the previous report was the finding that 18 states had still not adopted the FMCSA March 2002 rule requiring the states to enact laws and regulations directing enforcement personnel to take action whey they encountered a foreign motor carrier operating without proper authority from FMCSA.[217] That rule, which became effective on September 27, 2002, required such enforcement action as a condition of receiving MCSAP funds no later than September 27, 2005.

The truck safety community still had concerns about the safety of Mexico-domiciled motor carriers crossing the southern border. On June 10, 2003, the Senate

Committee on Commerce, Science, and Transportation held a hearing on the reauthorization of FMCSA. Several witnesses presented testimony, including the DOT OIG, labor, and a representative of four major highway and truck safety organizations.[218] The CMV safety organizations emphasized to the committee that, although most of Section 350 requirements were being met, FMCSA had continued to allow border-zone-only Mexico-domiciled motor carriers – the overwhelming majority of trucking companies seeking operating authority – to be given a DOT number solely on the basis of uncorroborated paper applications without any actual safety evaluation. This could lead to serious safety failures in commercial zone truck and bus operations. Similarly, although FMCSA had adopted a policy to verify Mexican commercial drivers HOS compliance, the agency in fact has no practical means of determining whether these drivers have violated Mexican labor regulation restrictions on working time.

The testimony of the safety organizations also stressed the ongoing problem of Mexico-domiciled commercial motor vehicles failing to provide the proper documentation that, at the time of manufacture, these trucks and buses complied with all applicable Federal Motor Vehicle Safety Standards (FMVSS) issued by the NHTSA. Federal law requires that all vehicles, including those operated in the U.S. by foreign nationals to conduct cross-border trade, must be certified by the manufacturer as built in accordance with U.S. safety standards. Major safety regulations have been adopted and implemented by NHTSA since the 1980s and, currently, there was no assurance that inspectors were reviewing each vehicle to determine if it conformed to federal safety requirements. Although FMCSA issued a proposed rule to require foreign trucks to comply with the certification law and regulations, the agency has since reversed course and decided not to require compliance with the law.[219]

The latest DOT OIG report, issued on January 3, 2005, struck a far less optimistic note on the readiness of FMCSA, the states, and southern border oversight procedures to ensure that Mexico-domiciled motor carriers would operate safely throughout the U.S. Overall, the OIG report did not regard preparations to be adequate for awarding long-haul operating authority to applicant carriers. Here is a summary of the report's findings:

►**On-Site Reviews:** The basic international agreement between the U.S. and Mexico to permit the Section 350 on-site safety reviews of Mexico-domiciled motor carriers seeking interstate operating authority in the U.S. has not been achieved. The Mexican government has not permitted U.S. safety auditors to conduct the reviews.

►**Hazmat Commercial Driver Security:** The U.S. Patriot Act[220] prevents state from issuing, renewing, or transferring a hazmat endorsement of a CDL unless a background check has been conducted to determine whether the endorsement applicant poses a security threat.[221] The latest OIG report, however, points out that comparable Mexican government requirements for ensuring the security condition of Mexican commercial drivers entering the U.S. do not exist.[222]

►**Mexican Motor Carrier Submitted Data:** The OIG found inaccurate data on both vehicles and drivers being submitted by Mexican motor carriers. Specifically, the OIG found that there are major data errors, such as 50 percent of Mexican motor carriers of record stating that they have no vehicles or tractors, and 52 percent of carriers stating they have no drivers. Similarly, 67 percent of Mexican carriers had not submitted updated census forms.

►**Some States not Sending Accurate Data on Mexico-Domiciled Motor Carriers:** Four states had not tested the driver data system for sending Mexican CMV driver convictions to the federal database. California had sent only 19 convictions to the federal database whereas Texas had sent over 4,000 convictions.
►**Drug and Alcohol Testing Issues Are Unresolved:** The OIG report could not assess implementation because no carrier had yet been given long-haul operating authority due to the intransigence of the Mexican government to allow the on-site safety evaluations required by Section 350. Also, Mexico does not have a certified drug testing laboratory and the U.S. does not evaluate the drug and alcohol testing facilities in Mexico. The OIG believed that this could quickly become a major problem.
►**There Is no Resolution of Certification of Compliance with Federal Motor Vehicle Safety Standards:** Although not a Section 350 requirement, the OIG was concerned that Mexican motor carriers have no way to demonstrate compliance of trucks and buses with the applicable safety standards in effect at the time of manufacture.
►**Some Weigh-In-Motion Scales Were Found to Be Inoperable:** The OIG found that four of the 10 WIM scales required by Section 350 to be placed at the highest volume border crossings were not working in Texas.
►**Border Entry Infrastructure Deficiencies:** Not every crossing had the completed inspection facilities necessary to perform full Level 1 inspections and provide a dedicated space to place noncomplying CMVs given OOS orders.
►**Insurance Information Cannot yet Be Verified:** Section 350 requires FMCSA to ensure that Mexico-domiciled motor carriers seeking long-haul authority provide proof of valid insurance with a company licensed in the U.S. However, the OIG could not assess implementation because no awards of long-haul operating authority had yet been made to any carrier.
►**Some States Are still without Enforcement Authority for Mexico-Domiciled Motor Carriers Operating without Proper Operating Authority:** Five states outside the border region and two (New Mexico and Texas) at the border still have not complied with FMCSA's rule that their states must adopt laws and regulations to place trucks and buses OOS if they are operating without proper operating authority. In addition, several other states have the laws on the books to do so, but are experiencing implementation problems resulting in a lack of preparedness to actually place Mexico-domiciled CMVs OOS for operating authority violations.
►**Mexico-Domiciled Buses Crossing into the U.S. without Inspections:** Many buses were found to be crossing into the U.S. without safety inspections due to inadequate personnel staffing at designated bus border crossing points.

Although the January 2005 OIG report found that Mexican carriers currently operating in the border zone had further improved their OOS rate, they had achieved only a 23 percent rate in fiscal year 2003, about the same as the rate of 22 percent for U.S. carriers. This means that, although the OOS rate for Mexico-domiciled carriers has improved over time, the rate for both U.S. and Mexico still remains high – almost one of every four carriers are placed OOS – and compares unfavorably with the 17 percent rate for Canadian motor carriers.

As of March 2007, further developments have affected the issue of cross border safety with regard to the operation of Mexico-domiciled motor carriers. The U.S. DOT has announced a reversal of an earlier decision not to conduct a pilot program and has announced near the end of February 2007 that it intends to conduct a one-year long pilot program consisting of 100 selected long-haul Mexico-domiciled trucking companies to operate nationwide. Safety advocates strongly oppose this decision because there still appears to be questions about cross-border Mexico-domiciled motor carrier safety, both with regard to prospective long-haul operations as well as ongoing deficiencies in inspection and compliance review results for Mexico-domiciled carriers operating solely in the southern commercial zones.

The current status of cross-border trucking operations by Mexico-domiciled carriers is still alarming. Drivers coming into the U.S. from Mexico still have high rates of violations. For example, the Federal Motor Carrier Safety Administration's (FMCSA) "NAFTA Safety Stats" on its Analysis and Information web site shows that for 2005, the latest year whose figures are posted, 21.5 percent of Mexico-domiciled commercial motor vehicles were placed OOS for vehicle defects. Of these, fully 17.50 percent were found to have their brakes out of adjustment. Bad brakes on trucks and buses from Mexico has been a chronic border safety problem for years.

Similarly, when drivers cross over into the U.S. driving trucks and buses from Mexico, over 15 percent don't even have any paper logbooks when they are asked for their records of duty status (RODS), and almost one in four drivers don't even have their own country's commercial driver license, the Licencia Federal de Conductor. In addition, one out of every 10 drivers from Mexico does not even have the proper license for the type of commercial motor vehicle they are driving. As for hazmat being hauled into the U.S., a very frightening aspect of cross-border trade for both safety and security concerns, nearly 22 percent of the vehicles transporting hazmat used prohibited placards in 2005 for identifying the nature of the dangerous cargo that was being hauled across the border, more than three times the rate for U.S. motor carriers hauling hazmat.

The U.S. DOT asks the public nevertheless to suspend belief and good judgment and accept on faith that the trucking companies from Mexico hand-picked to participate in the so-called "pilot program" will be radically different in the safety of their operations and management. DOT has implied that it will maintain intensive oversight of the companies selected to conduct U.S. long-haul operations.

This claim starkly contrasts with the poor record of FMCSA oversight of current commercial zone trucking operations coming from Mexico. There were 14,000 active motor carriers domiciled in Mexico conducting operations in the U.S. in 2005. However, only 106 Compliance Reviews (CRs) were conducted on Mexico-domiciled motor carriers that year, and that figure represents a decline from 236 in 2004 and 268 in 2003. The most intensive safety evaluation of a motor carrier, the CR, has slipped ***by more than 60 percent in only two years.*** The 2005 figure represents a comprehensive safety evaluation ***of only three-quarters of one percent (0.75%)*** of Mexico-domiciled motor carriers operating in the U.S. This is an even poorer oversight record than FMCSA's recently criticized failure by the members of the National Transportation Safety Board at a public hearing on February 21, 2007, of conducting severely inadequate numbers of

CRs for domestic carriers, only about 1.5 percent each year. The best year for the agency and its state partners in conducting CRs on Mexico-domiciled motor carriers was 2003 when ***less than two percent were performed.***

This oversight performance by FMCSA doesn't augur well for placing any trust in DOT's assurances that the participants in the pilot program will be closely scrutinized for their safety performance. Even if they are, that closer scrutiny could come at the expense of even further declines in FMCSA's safety evaluation of border-zone-only Mexico-domiciled motor carriers. It has to be stressed that the agency has taken on new responsibilities in recent years that further dilutes its resources, such as performing Safety Audits on approximately 48,000 new entrant domestic motor carriers. So it is clear that FMCSA is overwhelmingly putting its faith in controlling the safety of border-zone-only Mexico-domiciled carriers with federal and state roadside inspections. The agency is doing almost nothing to evaluate the safety management controls, drivers, and equipment of these carriers operating in the southern commercial zones through the most intensive safety evaluation, the CR.

The cross-border inspection figures on FMCSA's web site show that there were 4,575,887 crossings into the U.S. through the 24 recognized ports of entry by Mexico-domiciled motor carriers operating 41,101 power units (tractors) that haul hundreds of thousands of trailers. But only 180,061 inspections on these carriers' tractors and trailers were performed in 2005. Those inspections resulted in 21.3 percent of the vehicles being placed out of service for non-compliance with the Federal Motor Carrier Safety Regulations. This exceptionally poor inspection record does not encourage an optimistic view that FMCSA will abide by the Section 350 requirement for inspecting the vehicles operated by long-haul carriers participating in the pilot program.

None of the figures from FMCSA's own data sheets provides any reassurance that DOT is on the job ensuring that Mexico-domiciled motor carrier safety is being dramatically improved. Yet, against this backdrop of poor safety performance and meager oversight efforts, DOT now wants to find a way to justify opening the U.S border not just to limited operations in a narrow swath of roads in the four southern border states, but to long-haul foreign commerce throughout the U.S.

Current information shows that the states are still not ready to deal with truck commerce coming from Mexico. Dozens of states are still not placing Mexico-domiciled trucks and buses OOS when they are found to be operating illegally beyond the southern commercial zones, even though Section 350 requires that there must be a policy for the states for enforcement of Mexico-domiciled operating authority. Although FMCSA issued an interim final rule in August 2002 requiring state inspectors to place OOS any commercial vehicles operating without authority or carrying cargo or passengers beyond the scope of their authority, the fact is that about half the states beyond the border states are apparently not actually using their new authority to place Mexico-domiciled motor carrier trucks and buses OOS if they are found with illegal operating authority. 67 FR 55162 (Aug. 28, 2002).

FMCSA representatives have been very careful about how they characterize the states' new authority to place Mexico-domiciled motor carriers out of service. For

example, in a October 3, 2006, written statement of William Quade, the Director of Safety Programs for the agency, FMCSA carefully states that "[e]very State has adopted this regulation and the Commercial Motor Vehicle Safety Alliance has made operating beyond the scope of operating authority a violation that results in a carrier being placed out-of-service if discovered during a roadside inspection." Similarly, Mr. Quade also states that "[since] establishing this regulation, FMCSA has trained our employees and our State partners to identify carriers – regardless of where the carrier is from – who are operating beyond the scope of their operating authority." What isn't stated, however, is whether and to what extent the states are actually putting illegal Mexico-domiciled motor carriers OOS.[223]

FMCSA's Fiscal Year (FY) 2008 budget submission for Congressional appropriations reveals the festering problem of the states failing to put illegal carriers OOS even though they all now have the authority to do so. The budget document discusses the agency's goals for the Performance and Registration Systems Management (PRISM) program. FMCSA states that "[f]or FY 2007, PRISM grants will ensure that 25 PRISM states enforce their legislative authority to suspend, deny, or revoke vehicle registrations based on Federal out-of-service orders." Budget Estimates Fiscal Year 2008, Federal Motor Carrier Safety Administration, at 3B-15. Similarly, the agency has a goal for FY2008 of 30 states to suspend, revoke, or deny vehicle registrations based on OOS orders. *Id.*

If many states are still not actually stopping domestic trucks and buses from operating that don't have valid registration, it is certain that some states are not actually placing foreign motor carriers OOS if they are found to be operating beyond the scope of their legal authority. The U.S. DOT Inspector General in the last, full published report on the southern border, *op. cit.*, pointed out that, despite confirming that all states were equipped with the authority to place carriers out of service that are found to be operating with invalid authority from FMCSA, only four of 14 states interviewed in 2004 by the staff of the Inspector General were found to be actually placing Mexico-domiciled trucks and buses OOS because of a determination of illegal operating authority. Over two years later, there seems to have been no improvement. It appears that FMCSA's FY2008 budget goals for stopping trucks and buses already sanctioned with OOS orders and lifting their registrations is a harbinger of ongoing, poor state enforcement practices for Mexico-domiciled motor carriers found without proper operating authority.

It should be apparent that Mexico-domiciled motor carriers are not being inspected often enough, they receive few CRs each year, the vehicles have high rates of crucial safety equipment defects such as brake misadjustment, their drivers often don't have either logbooks for hours of service compliance or their own national drivers' license, and the states do not appear to be putting them out of service and preventing them from operating when they exceed their authority to operate beyond the border zone. It is against this backdrop of poor safety performance and poor federal and state oversight that DOT proposes to advance a pilot program to allow up to 100 Mexico-domiciled trucking to haul freight throughout the U.S. It is inconceivable that a similar pilot program would ever be proposed by the U.S. DOT to accommodate foreign airlines seeking to operate in this country if the same safety failings existed. There would be a

deafening outcry in Congress and by the public if such an ill-advised and dangerous proposal were suggested by the Administration.

There Is no Reliable Convictions Information about Drivers from Mexico

In the January 2005 audit report on Mexico-domiciled motor carriers, the Inspector General pointed out that data from the states was lacking on driver convictions of truck and bus operators from Mexico. A major issue of concern is whether any Mexico-issued commercial driver's license has been suspended or revoked because of violations. To date, safety organizations have been unable to get any clear answers to these and similar safety questions. The quality of this information is not only relevant to the legitimacy of the Licencia Federal de Conductors (LFC) of long-haul drivers potentially operating Mexico-domiciled trucks and buses throughout the U.S., but also of all the border-zone-only commercial drivers coming from Mexico with LFCs.

We certainly haven't been able to get a better understanding of this and similar issues from information that should be provided by DOT. Advocates for Highway and Auto Safety filed a Freedom of Information Act request on October 17, 2006, for all records pertaining to any planned pilot or demonstration program involving Mexico-domiciled motor carriers conducting long-haul operations throughout the U.S. To date, Advocates has received nothing but dilatory responses from the agency. Four and one-half months later, the safety community has been provided no opportunity to review the "voluminous" records on this crucial safety topic that the December 20, 2006, letter from FMCSA acknowledges that it has compiled. We do not believe that it is a coincidence that these records have continued to be withheld while DOT decided to go forward with a long-haul "pilot program" of 100 Mexico-domiciled motor carriers.

There Are Serious Questions on Drug and Alcohol Testing and Medical Examinations/Physical Fitness of Drivers from Mexico

Other issues allied with the issue of the conviction and LFC status of drivers of trucks and buses from Mexico operating in the U.S. are drug and alcohol testing and the physical fitness and medical standards applied in Mexico as a condition of commercial driver licensure. As far as we know, the issue of drug and alcohol testing has not been resolved.

Even if the select group of trucking companies from Mexico chosen for the planned pilot program have all drivers tested at approved U.S. drug and alcohol testing facilities, this does not address the issue of having documented proof that all cross-border foreign drivers are complying with all of the U.S. commercial driver requirements for drug and alcohol testing. This is particularly true of LFC drivers who are providing samples in Mexico and then sending them to U.S. labs for evaluation. The IG stated in the January 2005 report that collection facilities and procedures in Mexico are not certified. This means that the security of the samples is unknown. This is a major safety concern for all cross-border operations by Mexico-domiciled motor carriers, not just those few companies that are carefully selected to participate in a "pilot program."

In addition, the safety community has serious concerns about the medical standards and physical fitness requirements for LFC holders. It is well-known and recently acknowledged by both FMCSA and the states in a pending rulemaking action

integrating the Commercial Driver License (CDL) with the federally required medical certificate that commercial drivers "doctor-shop" to find health care providers that will find them physically fit to operate a commercial motor vehicle in interstate commerce. 71 FR 66723 (Nov. 16, 2006). In fact, thousands of these drivers have disqualifying medical conditions that would prevent the person conducting the physical examination from signing off on the required medical certificate. Some of the disqualifying medical conditions listed in FMCSA's regulations are unquestionably major threats to public safety if a commercial driver operates a big rig or a motorcoach with these diseases or impairments.

The safety community is deeply concerned over the quality of the medical examination and physical fitness requirements and process in Mexico for all LFC holders operating the U.S. Although this was not a specific, itemized requirement of Section 350 as originally enacted, it has become a growing concern with the gradual realization over the past few years that fraudulent and invalid medical certification among even U.S. commercial drivers is a pervasive, chronic problem that FMCSA is just beginning to attempt to curtail. There may be a similar problem in Mexico of drivers finding ways around medical examinations and fitness requirements for commercial licensure. If so, this threatens public safety here in the U.S.

Hazardous Materials and Bus Long-Haul Operations Have Been Put On Hold

Apparently, DOT is not contemplating long-haul commerce in the U.S. either by Mexico-domiciled hazmat haulers or by bus or motorcoach companies. Security issues for hazmat operations throughout the U.S. have not been satisfactorily resolved by the Transportation Security Administration. As for buses and motorcoaches coming into the U.S. from Mexico, the IG's January 2005 report found that sufficient inspection resources are not available at all designated border crossing points for verifying bus driver commercial licenses and for inspecting buses that have expirer Commercial Vehicle Safety Alliance decals. It appears that, as of March 2005, those inadequate bus inspection procedures have still not been corrected.

FMCSA Relies on Poor Data and a Defective Procedure for Identifying High-Risk Motor Carriers

There is a chronic problem of poor data quality supplied to FMCSA that it relies on to monitor commercial motor vehicle and motor carrier safety. The DOT Inspector General and the GAO in separate reports over the past several years, including reports in 2004 and 2005 already cited earlier, emphasized the unreliability of the safety data on motor carriers that FMCSA uses to operate its safety scoring algorithm, the Safety Status Measurement System, or SafeStat as it is commonly referred to.

The GAO report found that one-third of CMV crashes that the states are required to report to FMCSA were not reported, and those crashes that were reported were not always accurate, timely, or consistent.[224] Three years ago, following a DOT Inspector General report pointing out how unreliable the data were used by FMCSA, the agency removed the overall safety score for motor carriers from its web site.[225] Those data are still missing from the agency's web site. In addition, the Inspector General found in that report that 50 percent of Mexico-domiciled motor carriers in the U.S. claimed that it had no power units in operation!

The Inspector General issued yet another report on FMCSA data quality in April 2006.[226] The audit found that data quality is still seriously defective and that it undermines several important areas of FMCSA enforcement and substantially reduces the effectiveness of the Safety Status Measurement System (SafeStat) to identify high safety risk motor carriers. The Inspector General points out that, although FMCSA adopted a regulation a few years ago requiring registered motor carriers to update their registration every 2 years, 192,000, or 27 percent, of the registered 702,277 motor carriers did not update their census data on both drivers and trucks despite the requirement of the 2002 regulation. In addition, the report found that state crash forms are still not consistently defining a large truck or a reportable crash, failings which undermine the reliable data that FMCSA needs. The 2006 report also found that FMCSA, despite the previous, February 2004 OIG oversight report, had not taken sufficient action to achieve full updates of motor carrier census data and standardize crash data requirements and collection procedures. Data quality is crucial because the combination of updated, timely census data and crash data is used by SafeStat to rank safety performance of motor carriers and target them for compliance reviews and inspections. The OIG stressed in this recent report that, without these critical data, FMCSA cannot accurately identify the high-risk motor carriers.

However, it is doubtful that, even with timely, complete, accurate data reporting, FMCSA can identify the high-risk motor carriers. The other problem with the agency's safety monitoring system is the SafeStat system itself. This arcane method of scoring motor carrier safety has been repeatedly criticized, including an Oak Ridge National Laboratory report on SafeStat reviewed in the White Paper I am submitting for the record, *The Federal Motor Carrier Safety Administration: A Failed Agency*. The Oak Ridge analysis showed that the basis of SafeStat ultimately is subjective, based upon expert consensus opinion or judgment, and therefore has no meaningful statistical relationship to the data used to operate the system's algorithm for detecting high safety risk motor carriers. K. Campbell, R. Schmoyer, H. Hwang, *Review of the Motor Carrier Safety Status Measurement System*, Final Report, Prepared for the Federal Motor Carrier Safety Administration, Oak Ridge National Laboratory, October 2004. As a result, SafeStat often tapped the wrong motor carriers as safety risks.

Safety organizations have also shown both in the White Paper I just cited and in comments to FMCSA rulemaking dockets that SafeStat is a bankrupt method of identifying dangerous motor carriers, particularly small motor carriers with only a few power units. In addition, the algorithm incorporates a relativist, peer-to-peer safety rating system that has no independent, objective standards for motor carrier safety indexed to specific goals of reducing both the rate and the numbers of annual motor carrier fatalities. But, sad to say, these are the data and this is the system that DOT will rely on to monitor and gauge the safety of both long-haul and short-haul Mexico-domiciled motor carriers.

It remains to be seen what the Inspector General will report as the increased data quality and accuracy of SafeStat to identify risk-prone long-haul motor carriers operating throughout the U.S. The January 2005 report documented that ***one-third*** of the crashes that actually occurred were not reported to FMCSA from the states. The Inspector General's most recent findings also need to be matched against FMCSA's request for

funding for FY2008 that, among other things, still acknowledges that inadequate data on motor carrier safety are being provided by the states because the submissions involve either under-reporting, mistaken data entries, or late transmission to the agency.

Prospects for Compliance with Hours of Service Limits Are Poor

Safety organizations are still not satisfied that DOT has a system that will prevent drivers coming into the U.S. from Mexico who are already fatigued and sleep-deprived and present a serious threat to highway safety. In addition, drivers in Mexico are not subject to separate hours of service restrictions specifically tailored for commercial drivers. Apparently, there is only a general working hours limit of eight hours per day that, as far as we can determine on the basis of anecdotal evidence, is not enforced.

Even if commercial drivers with LFCs operate in the U.S. within current hours of service limits, those limits are currently again under legal challenge because, among many other defects, FMCSA refuses to acknowledge that the dramatic increases in working and driving hours it forced on truck drivers in 2003 and again in 2005 inherently foster fatigue and sleep deprivation. Although the 2003 rule was overturned in appellate court in a scathing opinion, FMCSA was undeterred: it attempted to rehabilitate the same failed hours of service rule with some new rationalizations and reissued it in virtually the same form in 2005. That new regulation increases the working hours of a U.S. commercial driver by 40 percent over an 8-day tour of duty and driving hours by 28 percent over the same time span. Commercial drivers can now work 98 hours in eight days and drive 88 hours in 8 days. Certain exemptions for short-haul operations in smaller trucks actually allow drivers to work over 100 hours in a week.

This is the "safety" regime that drivers from Mexico will operate within, a regulation that actually fosters worn-out drivers pushed day after day to deliver loads under nightmare schedules forced on them by motor carrier officials and shippers.

The other major problem hobbling any meaningful compliance with U.S. hours of service limits, as liberal as they are, is FMCSA's refusal to require electronic on-board recorders (EOBRs) to record the actual driving time of commercial operators. Despite the fact that the agency was required by Congress in Section 408 of the Interstate Commerce Commission Termination Act of 1995 (Pub. L. 104-88, Dec. 29, 1995, 109 Stat. 803, 958) to address the problem of hours of service regulations by evaluating EOBRs, the agency procrastinated until it was compelled by the appellate court in 2004 to adequately address the problem. The court acted because FMCSA had proposed adoption of EOBRs in the hours of service rulemaking proposal in 2000, 65 FR 25540 (May 2, 2000), but then had a change of heart after strong opposition from major sectors of the trucking industry. FMCSA terminated EOBR rulemaking in 2003 when it issued its first attempt at an amended hours of service regulation. 68 FR 22456 (April 28, 20003). Even then, the agency responded with only an advance notice of proposed rulemaking in September 2004 instead of proposing a long overdue EOBR regulation. 69 FR 53386 (Sept. 1, 2004).

EOBRs are of pivotal importance in arresting the epidemic of hours of service violations in the trucking industry. Several studies and surveys conducted by independent researchers, the Insurance Institute for Highway Safety, and the University

of Michigan for FMCSA's 2000 rulemaking proposal to amend the hours of service rule have shown repeatedly over many years that hours of service violations are a pervasive, chronic phenomenon among truck drivers. Truck drivers themselves have a poor opinion of the paper logbooks – Record of Duty Status (RODS) – that current FMCSA regulation requires them to maintain if they are operating outside a 100 air miles radius from their work reporting location. Often referred to as "comic books," many truck drivers regularly violate hours of service working time, driving time, and minimum rest time limits and falsify the entries on their paper logbooks. Seasoned drivers also know how to create a paper trail of accessory documents, often demanded by motor carrier enforcement personnel conducting CRs, that just happen to support, or at least not to contradict, the entries in the log books. I use the plural here of "log books" not just to refer to all the RODS maintained by interstate truck drivers, but also the two and sometimes three different log books maintained by just one driver: one that really memorializes hours of service, one for enforcement officials, and yet another for the motor carrier the driver works for.

But despite widespread violation of even the excessive working and driving hours of the current hours of service regulation, FMCSA in its recent rulemaking proposal will not abate this epidemic of abuse. 72 FR 2340 (Jan. 18, 2007). The agency disregards all previous research and survey literature on the pervasive violation of hours of service regulation and, instead, argues that EOBRs should be required only for the "worst offenders." These "worst offenders" are those who are detected in CRs as having at least 10 percent of their drivers found to have violated hours of service and then, within another two years, at least 10 percent are found again in a subsequent CR to have violated the regulation. Only then would the agency impose a requirement to install and use EOBRs to record driving time.

This is the agency that was just scathingly criticized by NTSB for its extraordinarily poor record of safety enforcement and oversight in the February 21, 2007, hearing on the horrific fire and consequent deaths of residents at an assisted living facility in Texas who were fleeing the approach of Hurricane Rita in a hired motorcoach. This is the agency that conducts only 7,000 to 11,000 CRs each year out of more 700,000 registered motor carriers, an effort, as I have already pointed out, amounts to about 1.5 percent CRs each year. This the agency that has just submitted a budget request to Congress stating that it intends to conduct only 10,000 CRs in both FY2007 and FY2008. This is the agency that states in its EOBR rulemaking proposal that it forecasts that about ***465 motor carriers each year would be required to install EOBRs.*** Out of the largest figure of registered motor carriers that we have heard – cited as more than 900,000 by NTSB staff on February 21, 2007, during the NTSB hearing on the Hurricane Rita motorcoach catastrophe – this amounts to ***five one-hundreds of one percent – 0.05% -- of registered motor carriers.*** Even if I were to use the lower, published figure from FMCSA on the number of registered motor carriers -- about 702,000 -- the percentage of motor carriers required to use EOBRs would be ***six one-hundreds of one percent – 0.06%.***

This proposed rule is so utterly ludicrous, so contemptuous of the need to curtail the epidemic of drivers falsifying their log books so they can drive until they literally fall asleep at the wheel, that FMCSA even has the gall in the preamble to argue that it could

not find any health benefits for drivers using EOBRs and, therefore, driving within the legal limits of the current hours of service rule. But this is also in keeping with an agency that repeatedly denies that it could find any adverse health impacts from having dramatically increased the amounts of driving and working time each week for commercial drivers in its 2003 and 2005 final rules amending the hours of service regulation.

If DOT believes that, without EOBRs, it can ensure that long-haul trucks from Mexico will not violate hours of service limits, then it is deceiving the American people. The use of EOBRs in any cross-border long-haul operations by Mexico-domiciled motor carriers must be mandated. Without EOBRs, the risk of crashes from sleep-deprived, exhausted foreign drivers cannot be reduced.

Any Pilot Program Permitting Mexico-Domiciled Motor Carriers to Operate Nationwide Must Comply with Section 4007 of TEA-21

Any pilot program allowing Mexico-domiciled motor carriers to conduct long-haul commerce in the U.S. must comply with all the particular requirements for pilot programs set forth in Section 4007 of Transportation Equity Act for the Twenty-First Century (TEA-21). Let me address the DOT proposal by describing pilot programs, what they are, and how they need to be conducted. Under Section 4007, the Secretary is authorized to conduct pilot programs either to evaluate alternatives to existing regulations or to evaluate "innovative approaches to" motor carrier, commercial motor vehicle, and driver safety.

There are multiple burdens DOT has to acquit in creating and implementing a pilot program. First, the pilot program must be placed before the public for notice and comment on the proposed contours of the program and the merits of the trial. In addition, Section 4007 specifies the threshold condition for a pilot program: "the Secretary shall require, as a condition of approval of the project, that the safety measures in the project are designed to achieve a level of safety that would otherwise be achieved through compliance with the regulations prescribed under this chapter" or under 49 U.S.C. § 31136. DOT must make a showing that convincingly demonstrates that the pilot program approach can achieve the same or better level of safety than the regulatory *status quo*.

Next, the pilot program must include several defining features:

- A scheduled life of no more than three years.
- A specific data collection and safety analysis plan that identifies a method for comparison, a reasonable number of participants necessary to yield statistically valid findings.
- An oversight plan to ensure that participants comply with the terms and conditions of participation.
- Adequate countermeasures to protect the health and safety of study participants and the general public.
- A plan to inform the states and the public about the program and to identify the participants both to safety compliance and enforcement personnel and to the public.

A specific data collection and safety analysis plan identifying a method for comparison and having sufficient statistical power to draw inferences has been the Achilles heel of previous FMCSA pilot program efforts. Safety organizations have challenged every one of FMCSA's labored efforts to adopt pilot programs as completely unscientific, using poor data gathering protocols, lacking controlled comparison groups for gauging the safety impact of the pilot programs, failing to control the numerous confounders of field experiments, and generating insufficient statistical strength to draw inferences.

None of the previous pilot programs are studies that would survive peer review in the scientific community. FMCSA does not conduct pilot programs just for determining their safety effects. Pilot programs conducted in the past by FMCSA have not been chosen to test "innovative approaches" to motor carrier safety or to evaluate whether some relaxation of portions of the Federal Motor Carrier Safety Regulations produce an equivalent or better safety result than compliance. They are chosen to buttress policy preferences that the agency already has formed.

Although the agency was charged in its 1999 enabling legislation, the Motor Carrier Safety Improvement Act of 1999, that "it shall consider the assignment of maintenance of safety as the highest priority, recognizing the clear intent, encouragement, and dedication of Congress to the furtherance of the highest degree of safety in motor carrier transportation[,]" the agency repeatedly acts in policy decisions and in regulatory proceedings as if it has a dual mandate to enhance the economic wellbeing of the trucking industry as well as to improve safety. In fact, FMCSA openly espouses and evaluates the productivity benefits of its regulatory proposals. When the agency needs to address a regulatory issue, there is always a scale with one side containing safety and a balance weight marked "productivity" put on the other side.

It is no coincidence that, in constructing a pilot program, FMCSA handpicks the very best participants to ensure that the outcome of the trial will justify a policy choice that the agency already wants to advance. The agency wants to buttress some economic interest of the trucking industry. Pilot programs are not scientific experiments.

Pilot programs cause great concern in the safety community because they are experiments with public safety. Although Section 4007 of TEA-21 directs that there must be adequate countermeasures adopted to ensure the health and safety of both pilot program participants and the general public, there are no assurances that relaxing regulatory requirements or testing "innovative approaches" to motor carrier safety might not result in terrible tragedies.

The safety community opposes the long-haul pilot program because FMCSA is not equipped with either the information or the enforcement and oversight resources to ensure even the safety of border-zone-only trucks and buses crossing into the U.S. from Mexico. There are unresolved questions of preparedness with respect to the letter of the law in Section 350 and also with other issues that have come to the fore since its enactment.

However, if the pilot program nevertheless goes forward despite strong opposition, including opposition registered with DOT through the notice and comment process, the safety community believes that it is imperative for any pilot program conducted by DOT allowing Mexico-domiciled trucks to operate nationwide to have important checks on how this effort is implemented. First, we urge the committee to ensure that there are stringent criteria stated by DOT in advance of any implementation of the program to immediately revoke the participation of any carrier or any driver that fails to comply with the terms and conditions of the program, a key requirement of Section 4007. Similarly, the Secretary needs to specify what adverse safety impacts of the pilot program involving crashes, violations of licensure requirements, abuses of the drug and alcohol testing requirements, and commission of serious traffic violations, among other things, would lead the Secretary to immediately terminate the program. Terminating a pilot program because of unacceptable safety impacts is another governing requirement of Section 4007.

Finally, considering the seriousness of this experiment with public safety and its implications for the future of motor carrier safety in the U.S., we ask the committee to direct the Secretary to convene a peer review panel prior to the start of the pilot program that will serve throughout the life of the program. The peer review panel would be charged with reviewing the operation of the program if it is implemented following public notice and comment. That panel should be formed under the Federal Advisory Committee Act and have balanced representation, including the safety community. The panel should act as an advisory body to the Secretary and recommend changes to the program if the need to protect public safety quickly becomes apparent, including the need to end the program because of unacceptable safety effects. The U.S. public should not simply be spectators to this experiment in highway safety because their lives could be at stake while it is underway. An oversight panel would ensure that the Secretary complies with every aspect of Section 4007, including shutting down the program for safety reasons.

Overall, it is clear that border preparations to ensure safe interstate operations of Mexico-domiciled motor carriers are uncertain, incomplete, and variable. Given the ongoing, problematic state of border safety oversight, permitting Mexican-domiciled motor carriers to operate freely throughout the U.S. will have unknown safety consequences, a result of FMCSA's inadequate approach to border enforcement and oversight. Despite this probable safety outcome of opening the U.S. to long-haul Mexican motor carriers, FMCSA is apparently attempting to force the issue of interstate commerce for Mexico-domiciled trucks and buses at the end of 2006 by preparing a pilot program that would allow approximately 100 Mexican motor carriers to travel beyond the current southern commercial zones to demonstrate the safety quality of Mexican long-haul operations in the U.S. As with several previous "pilot programs," it is certain that the agency would carefully select the Mexico-domiciled carriers with the very best safety records and practices to showcase that an open border for interstate commerce for Mexican trucks and buses would be acceptably safe and pose no additional, new risk to highway users throughout the U.S.

VI. Deficiencies in Education and Outreach Efforts.

As the DOT OIG pointed out in its April 1999 report,[227] federal motor carrier oversight under OMC had shifted disproportionately away from enforcement of the FMCSR towards educational and outreach efforts to improve compliance. However, as we have seen in several foregoing sections, even enforcement policies in both OMC and FMCSA have failed to adopt credible, hard-number measures of effectiveness that have validated agency safety efforts with provable reductions in CMV crashes, deaths, and injuries. Even major enforcement programs such as the performance of CRs and roadside inspections do not have demonstrable outcome measures showing improved regulatory compliance.

In fact, FMCSA has recently demoted the importance of roadside inspections because the agency cannot show a direct linkage between the level of effort and lower rates of vehicle and driver noncompliance and, therefore, lower OOS rates.[228] The agency's efforts in educational and outreach programs have also chronically failed to show a quantifiable payoff in either improved CMV safety or regulatory compliance. Even more critically, the agency has chosen to misplace its emphasis in a major, important new program by stressing mostly the education of new entrant carriers rather than adopting tough oversight and enforcement measures to ensure that new entrant motor carriers quickly become knowledgeable about their responsibilities under the FMCSR and conduct safety truck and bus operations.

Congress has become increasingly concerned about the effectiveness of FMCSA's outreach and education programs. At one point, Congress transferred the leadership of one FMCSA program to NHTSA for two years in an effort to ensure progress and better management.[229] In addition, Congress requested GAO to monitor and evaluate FMCSA's outreach and education programs.[230]

- **The New Entrant Program Emphasizes Education Instead of Oversight and Enforcement.**

The MCSIA, FMCSA's enabling act, required the Secretary of Transportation to establish a new entrant program to require each owner and each operator granted new operating authority to undergo a safety review within the first 18 months of beginning operations.[231] In response to this statutory mandate, FMCSA issued an interim final rule (IFR) that accepted motor carrier applications for registration and temporary operating authority without any initial, on-site safety audit to determine each carrier's capability to comply with the FMCSR.[232] Instead, the agency will allow each new entrant to operate for up to 18 months, or even longer, based primarily on the acceptance of a paper application. This was the same approach that FMCSA took in evaluating the safety of Mexico-domiciled motor carriers until Congress specifically required that the agency conduct on-site safety evaluations to justify awards of initial operating authority, followed by CRs with assigned safety ratings after a year-and-a-half of operation.[233]

Truck safety organizations objected to the FMCSA's approach to accepting new entrant applications for operating authority.[234] The objections were based on the fact that FMCSA was awarding operating authority to Mexico-domiciled motor carriers without any actual safety review of the applicant carriers. Although FMCSA adopted a safety evaluation as a condition of receiving new entrant operating authority, the agency does

not commit to an actual on-site safety audit. This means that an evaluation of carrier safety practices can consist of only a paper review without an on-site inspection of carrier equipment, initial recordkeeping efforts, and repair facilities.

Also, as with the case of FMCSA's pre-Section 350 plan for giving operating authority to Mexico-domiciled carriers, at the end of the 18 month period of temporary operating authority the exit safety evaluation performed by FMCSA is not a full CR and does not result in the assignment of a safety rating. FMCSA was urged to require initial, on-site company safety audits as a condition for registering with the agency and gaining operating authority and to grant permanent operating authority only if a new entrant underwent a full CR at the end of the probationary 18-month period and was awarded a Satisfactory safety rating.

Because the exit safety evaluation of new entrants resulted in permanent operating authority without an assigned safety rating, FMCSA's new entrant program was defective on yet another count – it would continue to add to the growing backlog of motor carriers who theoretically can operate in perpetuity without ever receiving a CR and obtaining a safety rating. As previously discussed, despite a statutory directive from Congress in Section 215 of the Motor Carrier Safety Act of 1984,[235] FMCSA has decided not even to attempt to safety rate all carriers.[236] Its new entrant program approach would add even more carriers to the existing majority that are not assigned a safety rating.

Another indication that FMCSA balked at adopting a rigorous safety evaluation at both the front and the back ends of the process for awarding operating authority to new entrants was the agency's refusal to require a safety proficiency examination of new entrants to assess how well they understood and were prepared to comply with their responsibilities under the FMCSR and the HMR. The MCSIA directs the Secretary to consider the establishment of a proficiency examination to ensure that they understand applicable safety regulations before being granted operating authority.[237] It is clear that, although Congress did not mandate adoption and administration of such a safety proficiency examination, it did see fit to express its keen interest on whether this additional tool for vetting the safety knowledge of new entrant carriers would produce better compliance and safer operations, and it explicitly required the agency to consider the value of such an examination.

However, the preamble of the 2002 IFR simply discards this clear expression of Congressional intent with a single sentence.[238] This kind of peremptory dismissal of legislative instruction does not meet any reasonable construction of the concept of "consideration." Instead of a proficiency examination, or a preliminary full safety review, or an exit CR with a safety rating, FMCSA's entire new entrant program as described in the IFR amounts to prescribing a perfunctory paper application for awarding operating authority supplemented by distribution of educational materials.

The inadequacy of the new entrant program's vetting process for assessing new entrant's safety knowledge and capabilities is clearly set forth in the latest OIG report.[239] The OIG investigation determined that new entrant motor carriers were not significantly safer than new motor carriers that had registered during the 2 years before the start of the new entrant program, nor did crash rates show any significant change, and this finding

agreed with FMCSA's own conclusion. The OIG report indicates that a major reason for the lack of safety progress with new entrants may be the weak safety audit criteria along with a need for increased enforcement of egregious violations and increased roadside inspections. It is clear that the primary reliance by FMCSA on educating new entrants does not have a positive safety effect and that the application for gaining preliminary operating authority is little more than a paper exercise without a demanding proficiency examination actually to test an motor carrier applicant's knowledge and capability to comply with the Federal Motor Carrier Safety Regulations and other applicable federal laws and regulations.

National CMV safety organizations do not discount the value of carefully constructed educational efforts to improve motor carrier safety practices and regulatory compliance. However, those efforts must be shown to have measurable effects on motor carrier safety by testing applicants and adopting quantitative measures of effectiveness (MOEs) that demonstrate improved operating safety and higher levels of compliance with the FMCSR. In turn, these educational programs must be strongly buttressed with effective oversight and enforcement policies to ensure that new entrants adhere to safe management practices and abide by their responsibilities under the safety policies and regulations issued by FMCSA.

National CMV safety organizations have consistently voiced this argument for several years about the purpose and measurement of educational efforts in docket comments, letters to both the agency and the Secretary, and in Congressional testimony. Recently, the GAO has issued a major oversight report that has made essentially the same findings about the inadequacies of FMCSA's educational and outreach efforts. GAO's December 2005 report sent to Congress reviewed five agency education and outreach programs comprising new entrant carriers, non-entrant carriers (interstate companies illegally operating without registration), motor coaches, CMV driver safety belt use, and household goods transportation.[240] In general, GAO found that FMCSA had not described how its educational and outreach activities link with expected changes in attitudes and behavior that result in measurable reductions in transportation-related fatalities. GAO found no evidence for FMCSA's claim that their education and outreach actions served agency safety goals except for the safety belt program.

GAO also was obviously concerned that, although the new entrant program had been underway for more than two years, FMCSA had not evaluated its effectiveness and did not intend to do so until 2008. Specifically, GAO judged that the agency's failure to evaluate its education and technical assistance efforts in the new entrant program results in a lack of any information to show that the new entrant program effectively communicates safety information. GAO concluded that this failure of the agency to evaluate its own education-based new entrant program made it very difficult to determine its impact on CMV safety. This finding is especially troublesome in light of GAO's later citation of the $33.1 million that FMCSA has been given in fiscal year 2005 appropriations legislation to administer the new entrant program.[241]

GAO also found that, although the agency does conduct a safety audit during the first 18 months of temporary operating authority of a new entrant, the safety audits are primarily a part of the process to acquaint new carriers with their safety and reporting

responsibilities. Although primarily informational, GAO points out that it is possible for a new entrant to fail a safety audit if it fails four of six sections on safety compliance. This could result in the loss of the new entrant's operating license and a denial of permanent operating authority.[242]

GAO in this report repeatedly returns to a major theme of its view of FMCSA's outreach and education efforts: these activities are more effective when explicitly linked with rigorous oversight and enforcement.[243] This finding is supported by GAO's determination that 60 percent of new entrants fail to check driver applicant backgrounds before hiring them, and up to 29 percent of carriers passed their safety audits yet had not maintained any maintenance records for requested vehicles.

GAO also found that FMCSA's preliminary comparison of crash rates for new entrants in early 2003 with new entrants that had later undergone safety audits turned up no differences. This is particularly disturbing because GAO points out that it is well known that new motor carriers have higher safety violations and crash rates than more experienced carriers. GAO concluded again from these considerations that the target audiences of all outreach and education efforts are more likely to change safety-related behaviors when exposed to a mutually supportive education and enforcement effort. Even with the current audit effort primarily geared towards educational effects on new carriers, GAO found that there was a backlog of safety audits in some states and that the exit audits that are required after the first 18 months of operation were not being conducted in a timely manner for all new entrants.

As a result of this investigation, GAO recommended that the Secretary should direct the FMCSA Administrator to take two major steps:

► Ensure that FMCSA describes and documents how education/outreach links to and directly supports broader program and agency goals in a planning, program, or budget document made available to the public.

► Evaluate the effectiveness of the new entrant program by assessing the extent to which the FMCSA education and technical assistance package and safety audits measurably help new entrant motor carriers to learn and comply with FMCSA requirements.

Congress has not lost sight of the importance of the new entrant program to ensure the safety of new truck and bus companies in interstate commerce before they are granted full, permanent operating authority. Pending U.S. DOT appropriations legislation, H.R. 5576, is accompanied by Senate and House Reports that stress the importance of getting new carriers to operate with high standards of safety when they first receive temporary operating authority. The House Report, for example, urges the Secretary to fund the new entrant program to the fullest extent allowed by law.[244] The Senate Report directs that a report be submitted to Congress on the number of new entrant safety audits when FMCSA submits its Fiscal Year 2008 budget for legislative consideration.[245]

- **The Agency's Share the Road Safely Program Has no Acceptable Measures of Effectiveness and Has Been Used primarily to Transfer Blame and Fault for Truck-Passenger Vehicle Crashes to the Drivers of Small Vehicles.**

In the early 1990s, the U.S. DOT embraced a trucking industry media initiative called the "No-Zone" which argued that each heavy truck in the traffic stream should have no vehicles in its vicinity. The "No-Zone" comprised wide swaths of the roadway immediately in front of a large truck, behind it, and in the two lanes adjacent to it on either side. The public relations effort was strongly based on an effort to shift the blame for the disproportionately high contribution of heavy trucks to crashes, fatalities, and injuries to passenger vehicle drivers. The U.S. DOT adopted the No-Zone approach as the basis for the Share the Road campaign, later renamed as the Share the Road Safely program. U.S. DOT began the effort, conducted through FHWA's public relations office, with a steady use of the accusations made by the trucking industry based upon a use of the Fatal Analysis Reporting System (FARS) driver codes, assigned by federal data analysts, that the majority of truck-passenger vehicle fatal crashes were caused by passenger vehicle driver improper or illegal actions behind the wheel.

Safety organizations responded quickly to these unsupported claims and emphasized both to the agency and the media that FARS-assigned driver codes are judgments made by agency analysts that, in turn, are derived from first impression reports provided by on-the-scene police officers investigating truck-passenger vehicle crashes. These reports that police provide are heavily influenced by interviews conducted with survivors of these multi-vehicle crashes involving big trucks. However, in nearly all cases of truck-passenger vehicle fatal crashes, only the truck drivers survive the collisions and are usually the primary source of police narrative about the events leading to multi-vehicle crashes.[246]

Following national safety organization objections to the use of FARS codes to assign fault or blame, FHWA published back-to-back issues of its Motor Carrier Safety Newsletter in which it explicitly rejected the claim that FARS driver codes can be used to judge the causes of truck-passenger vehicle collisions or to assign driver fault.[247] However, this rejection of the relevance of FARS codes to crash causation and fault did not dissuade the agency from continuing to allege that actions by passenger vehicle drivers are the preponderant reason for large truck-small passenger vehicle collisions. The agency began to rely on a study authored at the University of Michigan in 1998 that, again, claimed to show that passenger vehicle drivers were the primary contributor to large-truck passenger vehicle crashes.[248]

National CMV safety organizations analyzed this report and found that it provided no validation of the claim that passenger vehicle drivers were primarily responsible for crash involvements with large trucks. Subsequently, at the *2005 International Truck and Bus Safety and Security Symposium*, the author of that report openly disavowed in a concluding session that it could be used to assign crash causation or fault, and that it had been misunderstood and misapplied in that regard.[249] Moreover, the chief FMCSA spokesperson for the Large Truck Crash Causation Study also stated in an open session at that same conference that interpretations of crash data from FARS used by trucking industry representatives in a speech to the Symposium's attendees was being improperly cited to prove that passenger vehicle drivers caused most truck-passenger vehicle crashes.[250] More recently, he again has publicly characterized attempts to use FARS codes assigned by NHTSA data analysts to assign fault or to explain crash causation as improper.[251]

Nevertheless, FMCSA continues to assert in Share the Road Safely literature that passenger vehicle drivers are the primary reason for large truck-passenger vehicle crashes which it now bases on preliminary data and their analysis derived from the LTCCS. However, as shown above in Section II of this agency evaluation, the LTCCS is severely flawed at every level, including unreliable data and the use of an unaccepted research design that can produce no credible judgments about crash causation. Currently, FMCSA has no basis of any kind of justifying the assignment of crash responsibility for large truck-passenger vehicle collisions to the drivers of the small vehicles.

National CMV safety organizations have for many years shown that the Share the Road Safely program has no credibility, including no meaningful measures of effectiveness for any of its efforts and no justification for its expenditures of federal funds to advance this educational effort. For example, Advocates filed comments with the FMCSA notice published in late 2003 asking for comments on its proposed sample of 1,000 household interviews that the agency stated would help it establish a "baseline" for determining the public's awareness of large CMV operating limitations.[252] We emphasized that this effort was the same as that of FHWA in a prior notice which we also criticized as having no value because it measured attitudes of people rather than showing measurable changes in driver behavior that lead directly to reduced large truck-passenger vehicle crashes, deaths, and injuries.[253] The only meaningful empirical measure of the value of the Share the Road Safely program is the actual extent to which crash reduction both in numbers and in severity has been produced by the use of federal funds on this campaign.

GAO conducted its own investigation of the No-Zone/Share the Road Safely program in 1999 and came to the same conclusion: FHWA had failed to demonstrate achievement of its own asserted goal of reducing fatal crashes between large trucks and passenger vehicles, and the effort had no genuine quantitative MOEs. In testimony before Congress in 1999, the Director of GAO emphasized that the No-Zone campaign had failed its own asserted goal of reducing fatal crashes between trucks and passenger vehicles.[254] She pointed out that although FHWA adopted a goal of a 10 percent reduction in truck-passenger car crashes over a five-year period, the overall increase in such fatalities that had occurred showed that the campaign had made no progress at all. Moreover, the agency had no quantitative measures for how well or badly the campaign fared.[255]

Following this criticism, Congress directed a follow-up evaluation of the campaign, now renamed the Share the Road Safely program.[256] The second GAO critique of the program was more detailed than the first and again stressed that the program failed to have quantified MOEs to determine the extent of the educational effort.[257] GAO also pointed out that the agency itself had not evaluated the program since 2000 in any manner. In addition, the numerous highway safety representatives and researchers interviewed for this follow-up review all agreed that public education efforts alone are unlikely to produce substantial changes in driver behavior unless they are coupled with other safety initiatives such as local law enforcement programs to increase traffic law compliance.

GAO also criticized previous FHWA/FMCSA evaluations of the No-Zone/Share the Road Safely program because these efforts were unable to determine program effectiveness due to evaluations based simply upon self-reports by motorists that are biased, the failure of FMCSA to have any baseline of driver knowledge and behavior before the start of the program so that before/after effects of the program could be compared, and no ability of FMCSA to determine whether there were any changes in driving behavior or the frequency of large truck-passenger vehicle crashes because of program initiatives or because of other, unrelated influences. GAO also questioned the emphasis of the program on passenger vehicle drivers staying out the way of large trucks because the agency's own, later research showed that, at most, only 35 percent of fatal passenger vehicle-large truck collisions could be attributed to passenger vehicles traveling anywhere in the No Zone.

The Share the Road Safely program clearly needs major changes if it is to be a valuable effort to actually reduce large truck-passenger vehicle crashes, crash severity, deaths, and injuries. Currently, the program cannot demonstrate any value for the federal funds that have been appropriated and spent over the past several years. In particular, the emphasis of the program on passenger vehicle drivers avoiding large trucks in the traffic stream is based on the No-Zone concept which insists that small passenger vehicles cannot even be in the vicinity of large trucks when they share the roadway.

Not only is this unrealistic, it shifts attention away from the serious problems of poor, dangerous driving practices of large trucks and, among other things, away from the continuing problem of novice truck drivers who have no proper training on safely operating large CMVs in high-speed, high volume traffic conditions. It also ignores the enormous gains over the last several years in advanced truck technologies that improve CMV imminent crash detection and avoidance and tremendous advances in CMV driver visibility of the roadway and of the vehicles sharing adjacent lanes. Because the No-Zone/Share the Road Safely program has essentially become a public relations effort jointly administered by the trucking industry and FMCSA to shift attention and blame for large truck-small vehicle crashes away from truck drivers and toward passenger vehicle drivers, its fundamental purpose is not to reduce crashes, crash severity, deaths, and injuries, but rather to sway public opinion. If the Share the Road Safely program really targeted crash reduction, FMCSA by now would have adopted meaningful, peer-accepted criteria for measuring the success or failure of such an "educational" effort to lower crashes, deaths, and injuries. Because FMCSA has not done this, despite two criticisms 4 years apart by GAO that the program has no measures of effectiveness, it is apparent that the goal of the Share the Road Safely program is not the actual reduction of large truck-passenger vehicle crashes.

Most recently, Congress in SAFETEA-LU has redirected the program by assigning joint administration of a program to NHTSA and FMCSA for promoting a more comprehensive and national effort to educate CMV drivers and passenger vehicle drivers on how to safely share the road with each other.[258] Assignment of part of program administration to NHTSA, which has the majority of annual authorized funding through fiscal year 2009, is welcome because that agency has a much stronger track record of crafting and directing education programs. NHTSA's past educational efforts, such as raising the national percentage of seat belt use or of the use of child safety seats,

has hard-number MOEs and specific goals to be attained. It remains to be seen whether joint administration of the Share the Road Safely program will convert it into a useful educational effort and eliminate the trucking industry public relations emphasis of the program to date.

FMCSA also has stated that it is more willing to integrate an enforcement component into the Share the Road Safely program and, according a recent GAO report,[259] it is jointly conducting a pilot program with NHTSA in Washington state is described by GAO as combining education and enforcement with the purpose of improving the driving behavior of passenger-vehicle drivers when in the vicinity of trucks. If this description is accurate, then the pilot program is not a balanced effort to improve the quality of safe driving on the part of both types of drivers in each other's vicinity and does not accord with the balanced approach to the Share the Road Safely program directed by Congress in SAFETEA-LU. Moreover, the program appears to be oriented around enforcement officers riding in the cabs of large trucks with their drivers for the purpose of detecting and citing passenger vehicle driver violations.[260] This pilot program protocol inherently prejudices enforcement authorities to seek and cite passenger vehicle driver violations in lieu of CMV driver violations.

VII. Conclusion.

This detailed review of FMCSA shows that, since its inception at the end of 1999, the agency has chronically failed to use its resources, expanded by Congress on an annual basis in appropriations legislation, to comply with Congressional deadlines for rulemaking to identify dangerous motor carriers, quickly enforce violations of the agency's safety regulations, and take dangerous trucks and buses off U.S. highways and streets as fast as possible in order to protect and enhance the safety and health of all highway users.

In lieu of this kind of rapid response by a new safety modal administration to advance the public interest in this area of health and safety policy, FMCSA instead has repeatedly attempted to distort major safety policies and actions to further the economic health of the motor carrier industry. Although this is clear from many agency rulemaking and policy choices over the past seven years, it is most apparent in FMCSA's effort to dramatically increase the productivity of the trucking industry by ratcheting up commercial driver HOS to astronomical levels. Despite admonishment by the federal courts that the agency has not justified these tremendous increases in the working and driving hours imposed on truck drivers, FMCSA has not taken its thumb off the scale that favors the economic health of the trucking industry over public safety. The foregoing evaluation of seven years of FMCSA actions since the MCSIA repeatedly confirms that this is a failed agency that requires wholesale restructuring by Congress.

Endnotes

[1] *Motor Vehicle Traffic Crash Fatalities and Estimates of People Injured Based on the Fatality Analysis Reporting System (FARS) and the National Automotive Sampling System (NASS), General Estimates System (GES)*, National Center for Statistics and Analysis, DOT HS 810 639, August 22, 2006.

[2] Letter to Honorable Norman Mineta, April 22, 2003, from representatives of Advocates for Highway and Auto Safety, Public Citizen, Citizens for Reliable and Safe Highway, and Parents against Tire Truckers.

[3] Title 49 USC 113(b).

[4] Those systemic defects of the agency have recently been highlighted by the National Transportation Safety Board (NTSB, the Board) which sent a letter in mid-2006 to the Acting Administrator of FMCSA. The Acting Chairman of NTSB stated the Board's mounting frustration with the unresponsiveness of the agency to numerous, unresolved Safety Recommendations, some of them issued as along ago as 1993, that demonstrated badly needed action by FMCSA to address major areas of motor carrier safety. Letter of Mark V. Rosenker, Acting Chairman, NTSB, to Warren Hoemann, Deputy Administrator, FMCSA, April 16, 2006.

[5] Pub. L. 106-159, § 3 (Dec. 9, 1999), codified at 49 U.S.C. § 113 note (2004).

[6] Motor carrier safety regulation and enforcement functions had been placed in FHWA following transfer of jurisdiction over motor carrier safety from the Interstate Commerce Commission to the newly established Department of Transportation in 1966. *See* Pub. L. 89-670 (Oct. 15, 1966). At the time of transfer and for many years afterwards, the motor carrier regulatory and safety functions were carried out by the Bureau of Motor Carrier Safety, which was, in turn, later known as the Office of Motor Carriers, the Office of Motor Carrier Safety, Office of Motor Carrier Regulation, and finally the Office of Motor Carrier and Highway Safety. For convenience, this Report refers to FMCSA's predecessor agencies as OMC.

[7] The name of the General Accounting Office was changed to the Government Accountability Office by the GAO Human Capital Reform Act of 2004, Pub.L. 108-271 (Jan. 20, 2004).

[8] *Commercial Motor Vehicles: Significant Actions Remain to Improve Truck Safety*, Statement of Phyllis F. Scheinberg, Associate Director, Transportation Issues, Resources, Community, and Economic Development Division, United States General Accounting Office, before the Subcommittee on Transportation and Related Agencies, Committee on Appropriations, United States House of Representatives (Mar. 2, 2000). That testimony by Ms. Scheinberg came on the heels of her previous testimony in which she detailed OMC's failure to solve key data problems and its lack of attention to safety policies and regulations. *Truck Safety: Effectiveness of Motor Carriers Office Hampered by Data Problems and Slow Progress on Implementing Safety Initiatives*, Statement of Phyllis F. Scheinberg, Associate Director, Transportation Issues, Resources, Community, and Economic Development Division, United States General Accounting Office, before the Subcommittee on Ground Transportation, Committee on Transportation and Infrastructure, United States House of Representatives (Mar. 17, 1999).

[9] *Surface Transportation Safety: Motor Carrier Safety and Related Matters*, TR-1999-055, Statement of the Honorable Kenneth M. Mead, Inspector General, U.S. Department of Transportation, before the Subcommittee on Transportation, Committee on Appropriations, United States House of Representatives (Feb. 23, 1999); *Motor Carrier Safety Program – Federal Highway Administration*, TR-1999-091, Office of the Inspector General, U.S. Department of Transportation (Apr. 26, 1999). As will be pointed out later in this report, these data problems have significantly undermined FMCSA's ability to appropriately target high safety risk motor carriers for enforcement right up to the present time.

[10] *See*, Testimony of Judith Lee Stone, President, Advocates for Highway and Auto Safety, on Surface Transportation Safety, before the Subcommittee on Transportation, Committee on Appropriations, U.S. House of Representatives, February 23, 1999; testimony of Joan Claybrook, member of the Board of Directors, Advocates for Highway and Auto Safety, on the Federal Highway Administration Office of Motor Carriers, before the Subcommittee on Ground Transportation, Committee on Transportation and Infrastructure, U.S. House of Representatives, March 25, 1999.

[11] *See, e.g.*, the polls conducted for Advocates for Highway and Auto Safety by Lou Harris released September 1999, September 2001, and June 2004, where the overwhelmingly majority of respondents favored stronger truck safety laws and regulations, more vigorous federal oversight and enforcement, and appropriate safety restrictions and requirements governing the operation of foreign-domiciled commercial motor vehicles in the U.S.

[12] *Safety Action Plan -- Working Draft*, Federal Highway Administration, March 12, 1999.

[13] U.S. Department of Transportation Press Release No. 75-99, May 25, 1999.

[14] Title 49 U.S.C. § 113(b),(e).
[15] 49 U.S.C. § 113(b).
[16] Those government oversight evaluations of ongoing FMCSA deficiencies began almost immediately after legislative creation of the agency and have continued into early 2006. In July 2000, for example, the GAO reported to Congress that it could not determine how the numerous initiatives of FMCSA in its Safety Action Plan could achieve reductions in truck-related fatalities. *Commercial Motor Vehicles: Effectiveness of Actions Being Taken to Improve Motor Carrier Safety Is Unknown.* Report to the Chairman, Subcommittee on Transportation and Relative Agencies, Committee on Appropriations, House of Representatives, GAO/RCED-001-89 (July 2000). The critical appraisal of FMCSA data by the Oak Ridge National Laboratory will be discussed later in Section III of the report.
[17] Budget Estimates for Fiscal Year 2007, Federal Motor Carrier Safety Administration, 3A-41.
[18] Advocates for Highway and Auto Safety maintains a list of statutorily commanded safety rulemaking issues that have been delayed for many years, first by OMC and now by FMCSA.
[19] 57 FR 37504 *et seq.*, August 19, 1992.
[20] *See*, 49 CFR Pt. 395 (Apr. 1, 2002).
[21] Section 408, P.L. 104-88 (Dec. 29, 1995). The legislation took effect on Jan. 1, 1996.
[22] 61 FR 57252 *et seq.*, November 5, 1996.
[23] 65 FR 25540 *et seq.*, May 2, 2000.
[24] 68 FR 22456 *et seq.*(Apr. 28, 2003). There were further technical amendments modifying this final rule issued on September 30, 2003, at 68 FR 56202 *et seq.*
[25] An inverted working schedule means that drivers have a non-diurnal shift where they drive preponderantly at night and attempt to sleep during the day.
[26] 70 FR 3339, 3348, January 24, 2005.
[27] In the 2003 HOS rule, FMCSA for the first time divided the daily work shift into driving and non-driving time. Although it was not mandatory to use any non-driving working time, drivers were limited to a maximum of 11 hours of driving and 3 hours of non-driving work in each shift.
[28] Public Citizen, et al., *v. Federal Motor Carrier Safety Administration*, No. 03-1165 (D.C. Cir.).
[29] *Public Citizen* et al. v. *Federal Motor Carrier Safety Administration*, 374 F.3d 1209 (D.C. Cir. 2004). Congress subsequently provided that the 2003 HOS rule would remain in effect until the effective date of anew final rule addressing the issue raised by the court or by September 30, 2005, which came first. Surface Transportation Extension Act of 2004, Part V, § 7(f), Pub. L. 108-310 (Sept. 30, 2004).
[30] 49 U.S.C. § 31136(a)(4).
[31] Surface Transportation Extension Act of 2004, Part V, Section 7(f), Pub. L. 108-310 (Sept. 30, 2004).
[32] 70 FR 3339 *et seq.*
[33] FMCSA simply stated that the proposed rule would "enable FMCSA to evaluate the need for any changes to the April 2003, hours-of-service regulations . . ." *Id.* at 3340.
[34] 70 FR 49978 *et seq.*
[35] The April 28, 2003, HOS final rule expanded the number of working hours for short-haul drivers operating within a 100 airmile radius from a driver's normal work reporting location to permit one day in each tour of duty to be 16 hours long rather than limited to 14 hours. 68 FR 22456, 22505, 22516. In the August 25, 2005, new final rule, FMCSA went further to allow truck drivers without CDLs operating trucks in interstate commerce weighing less than 26,000 pounds to be permitted to work a second 16 hour day in a tour of duty and to be able to operate with this exemption within a 150 airmile radius. 70 FR 49978, 50039. The result is that these short-haul drivers without CDLs can work up to 102 hours in an 8-day tour of duty.
[36] *CTBSSP Synthesis 9: Literature Review on Health and Fatigue Issues Associated with Commercial Motor Vehicle Driver Hours of Work* (TRB Health Panel), Transportation Research Board, National Academy of Sciences, August 9, 2005.
[37] "Petition for Reconsideration Filed with the Federal Motor Carrier Safety Administration Regarding the Order Issued On Hours of Service of Drivers; Final Rule," filed by Advocates for Highway and Auto Safety, Citizens for Reliable and Safe Highways, Parents Against Tired Truckers, Public Citizen, the Trauma Foundation and the International Brotherhood of Teamsters, file Sept. 27, 2005, *see* U.S. DOT docket no. FMCSA-2004-19608-2362.
[38] *Public Citizen, et al., v. FMCSA*, Case No. 06-1035 (D.C. Cir.).
[39] 49 CFR § 395.15.
[40] Section 408, P.L. 104-88 (Dec. 29, 1995). As pointed out in the foregoing section on CMV driver HOS, Section 408 required the issuance of an ANPRM by March 1, 1996, a proposed rule within one year of

the ANPRM, no later than March 1, 1997, and a final rule within 2 years after the proposed rule, no later than March 1, 1999.

[41] 61 FR 58752 *et seq.*, November 5, 1996.

[42] 65 FR 25540 *et seq.*, May 2, 2000.

[43] 68 FR 22488.

[44] 69 FR 53386 *et seq.* (Sept. 1, 2004).

[45] 70 FR 64940, 64995 (Oct. 31, 2005).

[46] *On Guard*, 25:1, FHWA-MC-97-004, January 1997.

[47] The *Model Curriculum for Training Tractor-Trailer Drivers* 1985 incorporated the earlier agency publication published in 1984, *Proposed Minimum Standards for Training Tractor Trailer Drivers.*

[48] *Truck Safety: Information on Driving Training*, U.S. General Accounting Office (GAO-RCED-89-163), August 1989.

[49] *Training, Licensing, and Qualification Standards for Drivers of Heavy Trucks*, National Transportation Safety Board (NTSB/SS-86-02), April 1986.

[50] Section 4007(a), Pub. L. 102-240 (1991). The ISTEA provision also directed the Secretary to determine whether such training standards are needed for trucks greater than 10,000 pounds gross vehicle weight or for buses carrying 8 passengers or more plus a driver.

[51] 58 FR 33874 *et seq.*, June 21, 1993.

[52] 61 FR 18355 *et seq.*, September 30, 1996.

[53] *Assessing the Adequacy of Commercial Motor Vehicle Training: Final Report*, 3 vols., prepared by Applied Science Associates, Inc., for the Federal Highway Administration, Office of Motor Carriers, July 1995.

[54] 68 FR 48863 (Aug. 15, 2003). The four knowledge areas of instruction are: (1) CDL requirements and disqualifications; (2) hours of service; (3) driver health; (4) whistleblower protection. FMCSA proposed no minimum amounts of time for such training in these ancillary areas of driver knowledge and no specific curriculum content for such instruction.

[55] *Id.* at 48869.

[56] *Id.* at 48868.

[57] *See, e.g.*, comments of Advocates for Highway and Auto Safety dated October 14, 2003, filed with Docket No. FMCSA-97-2199.

[58] 69 FR 29384 *et seq.*, May 21, 2004.

[59] *See, e.g.*, advance notice of proposed rulemaking, 58 FR 33875 (need date); Final rule, 69 FR 29387 *et seq.* (need date); "On Guard, 25:1," *op. cit.*

[60] *Advocates for Highway and Auto Safety v. Federal Motor Carrier Safety Administration*, No. 04-1233 (D.C. Cir.).

[61] *Advocates for Highway and Auto Safety v. Federal Motor Carrier Safety Administration*, 429 F.3d 1136 (D.C. Cir. 2005).

[62] *Advocates v. FMCSA*, Opinion at 3.

[63] *Advocates v. FMCSA*, Opinion at 4.

[64] *Advocates v. FMCSA* at 1151.

[65] House Report 109-495, 109th Congress, 2nd Sess., June 9, 2006, at 50.

[66] 49 CFR § 383.93(b)(1),(c)(1).

[67] ISTEA, Title IV, § 4007(b)(2), Pub. L. 102-240 (Dec. 18, 1991) *codified at* 49 U.S.C. § 31307 (1997).

[68] 58 FR 4638, January 15, 1993.

[69] *In re Citizens for Reliable and Safe Highways*, No. 02-1363 (D.C. Cir.), petition available at http://www.citizen.org/documents/Petition%20Final.pdf.

[70] *See* settlement agreement dated Feb. 2003, *In re Citizens for Reliable and Safe Highways*, No. 02-1363 (D.C. Cir.), available at http://www.citizen.org/documents/TruckSafety%20RulesAgreement0224.pdf.

[71] 68 FR 47890, August 12, 2003.

[72] 68 FR 16722 *et seq.*, March 30, 2004.

[73] 63 FR 19457.

[74] 69 FR 63997.

[75] Truck and Bus Safety Regulatory Reform Act of 1988, Title IX, Subtitle B, § 9104 of the Anti-Drug Abuse Act of 1988, Pub. L. 100-690 (Nov. 18, 1988), *codified at* 49 U.S.C. § 31309(d)(2)(1997).

[76] 54 FR 20975.

[77] 56 FR 9925.

[78] TEA-21, Title IV, § 4011, Pub. L. 105-178 (June 9, 1998), *codified at* 49 U.S.C. § 31308 note (2004).

[79] *Id.*
[80] 70 FR 24358.
[81] *See*, FMCSA's Semi-Annual Regulatory Agenda, 70 FR 64940, 64998.
[82] As of the date of this Report, the removal of Accident Safety Evaluation Area figures and overall scores for the Safety Status Measurement System is still in effect. *See* http://ai.fmcsa.dot.gov/SafeStat.
[83] The MCSIA calls on FMCSA, together with NHTSA, to improve the collection and analysis of data on CMV crashes, including forging agreements with the states to collect and report data through electronic means for storage in a central data repository and to train state personnel and enforcement authorities to ensure the quality and uniformity of the data collected. MCSIA, § 225, Pub. L. 106-159 (Dec. 9, 1999). Even prior to the creation of FMCSA, Congress was keenly aware of the data insufficiencies of OMC and mandated several data improvements directing the agency to carry out comprehensive data information collection and analysis efforts to support motor carrier safety regulatory and enforcement actions, including an integrated information network governing identification of carriers and drivers, vehicle registration and license tracking, and CMV and driver safety performance data. The Secretary of Transportation was also directed to prescribe standards to ensure uniform, timely, reliable, and accurate information collection by the states. TEA-21, Title IV, § 4004, Pub. L. 105-178 (June 9, 1998).
[84] All figures used in assessing the number of truck crash fatalities and the rate of truck crash deaths per 100 million vehicle miles traveled are taken from the Fatality Analysis Reporting System (FARS) that is generated by NHTSA's National Center for Statistics and Analysis (NCSA), supplemented by information supplied to Advocates through a special data request made to NCSA in 2005.
[85] "Motor Vehicle Traffic Crash Fatality Counts and Estimates of People Injured for 2005" *op. cit.*
[86] *See, Budget Estimates Fiscal Year 2007 – Federal Motor Carrier Safety Administration*, Submitted for Use of the Committees on Appropriations, 2006.
[87] *Federal Motor Carrier Safety Administration 2010 Strategy and Performance Planning*, December 2000. http://www.fmcsa.dot.gov/pdfs/SP_PUBLIC_Version3.pdf. That long-range plan, however, has been removed from FMCSA's web site and the address for the plan, despite being linked through several U.S. DOT sites, including the Bureau of Transportation Statistics, now only provides a message of "Page Not Found."
[88] The misguided goal of pursuing truck fatality rate reductions instead of actually saving lives and reducing the annual death toll was emphasized in the testimony of Joan Claybrook, Chair, Citizens for Reliable and Safety Highways (CRASH), before the Surface Transportation and Merchant Marine Subcommittee of the Senate Committee on Commerce, Science, and Transportation, United States Senate, June 10, 2003.
[89] "Motor Carrier Safety Program: Federal Highway Administration," *op. cit.*
[90] *Significant Improvements in Motor Carrier Safety Program since 1999 Act but Loopholes for Repeat Violators Need Closing*, OIG Report Number MH-2006-046, April 21, 2006.
[91] GAO points out in its December 15, 2005, report that the disparity between FMCSA goal for crash rate reduction has widened in recent years, with the 2003 fatality rate of 2.31 comparing unfavorably with the target of 2.19. "Large Truck Safety: Federal Enforcement Efforts Have Been Stronger since 2000, but Oversight of State Grants Needs Improvement," *op. cit.* As indicated earlier, FARS data provided to Advocates by the NCSA shows that the 2003 rate actually was finalized at 2.33. GAO also points out that preliminary truck miles-traveled data for 2004 indicates a rate of 2.29 which is even further off the mark from the agency's self-imposed goal of 2.07.
[92] Early figures for 2005 from the National Center for Statistics and Analysis (NCSA) puts the rate at 2.34. In addition, the figure for 2004 provided by the NCSA has the rate at 2.37 instead of FMCSA's claimed rate of 2.29.

[93] FY2008 FMCSA Budget Submission at 4A-14 (emphasis supplied).
[94] *Motor Carrier Safety Program – Federal Highway Administration*, Office of the Inspector General, U.S. Department of Transportation, Report Number AS-FH-7-006, March 26, 1997.
[95] *Motor Carrier Safety Program – Federal Highway Administration*, Report Number, Office of the Inspector General, U.S. Department of Transportation, TR-1999-091, April 26, 1999. That report had been preceded by testimony delivered by the Inspector General of the U.S. Department of Transportation before the Subcommittee on Transportation, Committee on Appropriations, United States House of Representatives, February 23, 1999, in which the he emphasized that FHWA could not identify which motor carriers were the highest safety risks because of the agency's poor data system, and stressed that action needed to be taken because the number of truck-crash fatalities was increasing each year. *Surface*

Transportation Safety: Motor Carrier Safety and Related Matters, Testimony of the Inspector General, U.S. Department of Transportation, Report Number TR-1999-055, February 23, 1999.

[96] *Motor Carrier Safety,* Statement of the Honorable Kenneth M. Mead before the Subcommittee on Transportation, Committee on Appropriations, United States House of Representatives, Report Number TR-2000-059, March 2, 2000; this was followed by a full audit report on the inadequacies of the disqualification programs of FMCSA and the states: *Disqualifying Commercial Drivers: Federal Motor Carrier Safety Administration,* Report Number MH-2000-106, June 30, 2000.

[97] *See,* Statement of Phyllis F. Scheinberg, Associate Director, Transportation Issues, Resources, Community, and Economic Development Division, *Truck Safety: Effectiveness of Motor Carriers Office Hampered by Data Problems and Slow Progress on Implementing Safety Initiatives,* GAO/RCED-99-122, March 17, 1999; Statement of Phyllis F. Scheinberg, Associate Director, Transportation Issues, Resources, Community, and Economic Development Division, *Commercial Motor Vehicles: Significant Actions Remain to Improve Truck* Safety, before the Subcommittee on Transportation and Related Agencies, Committee on Appropriations, United States House of Representatives, GAO.T-RCED-00-102, March 2, 2000.

[98] *Highway Safety: Further Opportunities Exist to Improve Data on Crashes Involving Commercial Motor Vehicles,* GAO-06-102, November 18, 2005, transmitted to the Subcommittee on Transportation, Treasury, the Judiciary, House and Urban Development, and Related Agencies, Committee on Appropriations, United States Senate; and to the Subcommittee on Transportation, Treasury, and Housing and Urban Development, the Judiciary, and District of Columbia, Committee on Appropriations, United States House of Representatives. This report unfortunately duplicates many of the same criticisms of agency data system failures that GAO pointed out back in 1999. *See, Truck Safety: Motor Carriers Office Hampered by Limited Information on Causes of Crashes and Other Data Problems,* GAO/RCED-99-182, June 29, 1999.

[99] "Significant Improvements in Motor Carrier Safety Program since 1999 Act but Loopholes for Repeat Violators Need Closing," *op. cit.* This report will be cited again in succeeding sections of this white paper because this most recent OIG investigation covered several areas of enforcement and data quality. However, the OIG report indicated that, although FMCSA responded to some of the recommendations of report with its perspective, it initially did not propose any actions or plans that were responsive to the detailed recommendations that were listed at the end of the report. Representatives from the OIG's office then held a face-to-face meeting with agency principals that resulted in a judgment by the OIG that FMCSA continued to demur on emphasizing improved and updated census information.

[100] 67 FR 9410 (March 1, 2002); also *see,* 49 CFR § 390.19.

[101] *Improvements Needed in Motor Carrier Safety Status Measurement System,* OIG Report Number MH-2004-034, February 13, 2004. The OIG also found that even those motor carriers that had updated their census information in a timely manner nevertheless had submitted incomplete information. Eighty-five thousand, five hundred and eighty-six (85,5686) motor carriers were found by the OIG investigators in the census to have no drivers and no power units, of which 20,065 had updated their census entries with zero drivers and 16,623 had updated their entries with zero power units since August 2002.

[102] "Significant Improvements in Motor Carrier Safety Program since 1999 Act but Loopholes for Repeat Violators Need Closing," *op. cit.*

[103] *See,* "Improvements Needed in the Motor Carrier Safety Status Measurement System: Federal Motor Carrier Safety Administration," *op. cit.*; K. Campbell, R. Schmoyer, H. Hwang, *Review of the Motor Carrier Safety Status Measurement System,* Final Report, Prepared for the Federal Motor Carrier Safety Administration, Oak Ridge National Laboratory, October 2004.

[104] Testimony of Annette Sandberg, Administrator, FMCSA, before the Subcommittee on Highways, Transit, and Pipelines, Committee on Transportation and Infrastructure, U.S. House of Representatives, March 2, 2006.

[105] "Highway Safety: Further Opportunities Exist to Improve Data on Crashes Involving Commercial Motor Vehicles," *op. cit.*

[106] "Significant Improvements in Motor Carrier Safety Program . . .," *op. cit.*

[107] K. Campbell, R. Schmoyer, H. Hwang, "Review of the Motor Carrier Safety Status Measurement System," *op. cit.* The Oak Ridge SafeStat review was preceded by the evaluation conducted by the U.S. DOT OIG which also found systemic deficiencies in SafeStat that prevented the algorithm from identifying high safety risk motor carriers. *See,* "Improvements Needed in the Motor Carrier Safety Status Measurement System, *op. cit.*, February 2004. However, only one month later the Volpe study,

SafeStat Effectiveness Study Update, John A. Volpe National Transportation Systems Center, March 2004, nevertheless concluded that SafeStat can validly identify higher-risk motor carriers.

[108] It should be noted here that the Volpe Center issued its SafeStat Effectiveness Update in March 2004, only 8 months before the ORNL SafeStat evaluation, that concluded through the use of several techniques, including the use of a simulated SafeStat carrier identification using historical data, that SafeStat did identify carriers with a higher crash risk. "SafeStat Effectiveness Study Update," *op. cit.* In light of the Oak Ridge Study and OIG reports, both also issued in 2004, there is a serious question of whether any of FMCSA's self-assessments of the utility of SafeStat can be relied on.

[109] 71 FR 26170 *et seq.*, May 3, 2006.

[110] *Curbside Operators' Bus Safety: Statement of Jacqueline S. Gillan, Vice President, Advocates for Highway and Auto Safety before the Subcommittee on Highways, Transit, and Pipelines, House Committee on Transportation and Infrastructure, U.S. House of Representatives,* Washington, DC, March 2, 2006.

[111] Comments of Advocates for Highway and Auto Safety, June 30, 2006, to Docket No. FMCSA-2005-23239, 71 FR 26170, May 3, 2006.

[112] For more than two years, FMCSA has had two cautionary statements posted on its SafeStat web site, the first warning that some motor carriers may not have the actual number of power units that is recorded by the agency. This caveat also states that the Accident Involvement Measure calculation and the subsequent Accident Safety Evaluation Area value for these carriers **"do not accurately reflect the motor carrier's safety status."** http://www.fmcsa.dot.gov/SafeStat/warningii.htm (emphasis in the original). The other warning statement entitled "Caution Urged in the Use of SafeStat Data" states that the agency ahs removed the Accident Safety Evaluation and overall SafeStat scores from the Analysis & Information Online web site as FMCSA "works with its State partners to improve the timeliness, completeness, and accuracy of large truck and bus safety data." However, FMCSA also asserts that, although the public cannot access these scores, motor carriers are still able to see their own Accident Safety Evaluation Area and Overall SafeStat scores. *See*, http://ai.fmcsa.dot.gov/SafeStat/disclaimer.asp?RedirectedURL=/SafeStat/SafeStatMain.asp.

[113] MCSIA, § 224.

[114] There is no line-item funding amount for the LTCCS in FMCSA's budget requests for fiscal years 2006 or 2007.

[115] This cost figure was used in a presentation made by Advocates for Highway and Auto Safety before the *2005 International Truck and Bus Safety and Security Symposium*, Nov. 14-16, 2005 (Alexandria, VA). The presentation was part of an open session in which the chief representative of FMCSA for the LTCCS participated, and the FMCSA representative did not take issue with this figure.

[116] The CDC report, *Evaluation of the Large Truck Crash Causation Study* (Mar., 2005), was produced in response to a request by Congress contained in Conf. R. No. 108-10, p. 1280 (2003), to accompany H.J. Res. 2, Making Further Continuing Appropriations for the Fiscal Year 2003, and For Other Purposes, Pub. L. 108-7 (Feb. 20, 2003), to evaluate the research design of the study.

[117] Advocates for Highway and Auto Safety has authored several documents over the past several years detailing the major defects of the LTCCS and, most recently, authored a paper that was presented at the *2005 International Truck and Bus Safety and Security Symposium, op. cit.*, entitled, *The Large Truck Crash Causation Study: A Lost Opportunity* (Advocates, 2005).

[118] K. Thiriez, G. Radja, G. Toth, *Large Truck Crash Causation Study – Interim Report*, Report No. DOT HS 809 527, September 2002. For all practical purposes, this report takes no notice of the TRB committee's criticisms and requests for addressing cardinal defects in the LTCCS data collection and research design.

[119] *Report to Congress on the Large Truck Crash Causation Study*, MC-R/RA, March 2006. That final report, however, failed to comply with Congressional direction to the agency to provide legislative recommendations, as pointed out in the U.S. DOT OIG study issued on April 21, 2006, "Significant Improvements in Motor Carrier Safety Program since 1999 Act but Loopholes for Repeal Violators Need Closing, *op. cit.*

[120] The FMCSA representative who attended the *2005 International Truck and Bus Safety and Security Symposium, op. cit.*, stated at the session devoted to the LTCCS that no final report would be issued but that the database alone would be made available for researchers to use.

[121] Nov. 14-16, 2005 (Alexandria, VA).

[122] Ralph Craft, Office of Research and Analysis, FMCSA, presentation on the LTCCS at the Transportation Research Board 2006 Annual Meeting, FMCSA Forum on Safety and Security

Accomplishments, January 22, 2006, Washington, D.C. In his presentation, Mr. Craft did not acknowledge any adverse criticism of the LTCCS data gathering protocol and research design approach made repeatedly by the TRB special oversight committee in its letter reports, by national CMV safety organizations, or by the CDC.

[123] J. Hedlund and D. Blower, "Using LTCCS Data for Statistical Analyses of Crash Risk," *Large Truck Crash Causation Study Analysis Series*, FMCSA-RI-05-037, Federal Motor Carrier Safety Administration, January 2006.

[124] "Using LTCCS Data for Statistical Analyses of Crash Risk," *op. cit.*

[125] FMCSA published successive notices in 2004 and 2005 requesting Office of Management and Budget clearance for new information collection actions by FMCSA to collect "crash causation data." Although Advocates for Highway and Auto Safety filed comments with the dockets for both notices objecting to the information collection approach and opposing approval, the data collection efforts as described have gone forward.

[126] *Id.*

[127] *See*, E. Braver, *et al.*, "Long Hours and Fatigue: A Survey of Tractor-Trailer Drivers," *Journal of Public Health Policy* (1992) 13:341-366; R. Hertz, "Hours of Service Violations among Tractor-Trailer Drivers," *Accident Analysis and Prevention* (1991) 23:29-36.

[128] *See*, M. Belzer, *Hours of Service Impact Assessment*, Contract No. DTFH81-96-C-00038, Federal Highway Administration, U.S. Department of Transportation, March 5, 1999, which, in large part, summarizes the University of Michigan Trucking Industry Program (UMTIP) survey showing the widespread, high rate of HOS violations by truck drivers. Also *see*, K. Campbell and M. Belzer, *Hours of Service Regulatory Evaluation Analytical Support – Task I: Baseline Risk Estimates and Carrier Experience*, University of Michigan Transportation Research Institute, UMTRI-2000-11, prepared for the Federal Motor Carrier Safety Administration.

[129] 65 FR 25540 *et seq.* (May 2, 2000).

[130] "Significant Improvements in Motor Carrier Safety Program . . ., *op. cit.*

[131] *Id.*

[132] *Implementation of Commercial Vehicle Safety Requirements at the U.S.-Mexico Border: Federal Motor Carrier Safety Administration*, U.S. Department of Transportation Office of the Inspector General, Report Number MH-2002-094, June 25, 2002.

[133] Section 215 of the Motor Carrier Safety Act of 1984 requires the Secretary to maintain, by regulation, a procedure for determining the safety fitness of an owner or operator of commercial motor vehicles. 49 U.S.C. § 31144.

[134] *Motor Carrier Safety Program*, Report Number AS-FH-7-006, March 26, 1997. The goal of assigning safety ratings to all motor carriers by September 30, 1992, was a self-imposed target by OMC that could not be attained, as pointed out in the GAO report of January 1991, *Truck Safety: Improvements Needed in FHWA's Motor Carrier Safety Program*, Report No. GAO/RCED-91-30. At the time of GAO's preparation of this report, about 60 percent of interstate motor carriers had not been given a safety rating. As GAO points out in this report, the agency decided that its safety oversight resources would be better spent elsewhere rather than attempting to safety rate all motor carriers in accordance with legislative requirements. On October 1, 1994, OMC discontinued safety reviews to assess unrated motor carriers.

[135] The most recent statement of the governing regulations for determining safety fitness is the FMCSA final rule of August 22, 2000 (65 FR 50919 *et seq.*), which was a response to the increased stringency of safety fitness requirements enacted in Section 4009 of TEA-21 that amended 49 U.S.C. § 31144, originally enacted by Section 215 of the Motor Carrier Safety Act of 1984 (P.L. 98-554, 98 Stat. 2832). This final rule amended the regulations for safety fitness determinations in 49 CFR Pts. 385 and 386. Pt. 386 contains the controlling criteria for making safety fitness determinations and Pt. 387 contains the rule of practice for the agency controlling the issuance of CR ratings, petitions, hearings, orders, and other administrative machinery for conducting the oversight and enforcement programs of FMCSA. It should also be noted that FMCSA recognizes that its administrative selection of the three rating categories of safety fitness, Satisfactory, Conditional, and Unsatisfactory, have been legislatively enshrined through explicit mention and use of the three ratings in Section 15(b) of the Sanitary Food Transportation Act of 1990, Pub. L. 1011-500 (Nov. 3, 1990). **[this note needs to be seriously edited for clarity!]**

[136] "Motor Carrier Safety Program: Federal Highway Administration," *op. cit.*

[137] Census data from the Motor Carrier Management Information System (MCMIS) found at http://www.fmcsa.dot.gov. Also *see*, the December 15, 2005, GAO report, "Large Truck Safety: Federal

Enforcement Efforts Have Been Stronger since 2000, but Oversight of State Grants Needs Improvement," *op. cit.*

[138] http://www.ntsb.gov/Recs/mostwanted/truck_safety.htm.

[139] *Id.*

[140] *Large Truck Safety: Federal Enforcement Efforts Have Been Stronger since 2000, but Oversight of State Grants Needs Improvement*, GAO-06-156, December 15, 2005.

[141] http://ai.fmcsa.dot.gov/ProgramMeasures. However, another location on FMCSA's web site lists 2004 CRs at a total of 10,104, and the number of active motor carriers is placed at 651,145. http://ai.fmcsa.dot.gov/international/border. These conflicting figures and discrepancies are widespread on FMCSA's web site.

[142] http://www.fmcsa.dot.gov/facts-research/facts-figures.

[143] *See*, "Motor Carrier Safety Program: Federal Highway Administration," *op. cit.*

[144] *Motor Carrier Safety at the U.S.-Mexico Border*, Statement of the Honorable Kenneth M. Mead, Inspector General of the U.S. Department of Transportation, before the Committee on Commerce, Science, and Transportation, United States Senate, July 18, 2001.

[145] "Curbside Operator's Bus Safety . . .," *op. cit.*

[146] 71 FR 61131 (Oct. 17, 2006).

[147] FMCSA also describes the *Comprehensive Safety Analysis 2010 Initiative* more succinctly on its web site at http://www.fmcsa.dot.gov/safety-security/safety-initiatives/csa2010/csa2010listening.htm.

[148] 71 FR 61134.

[149] The agency itself has provided a previous, extended discussion of why fatigue-related crash reporting by police as entered in the FARS data system is unreliable. In fact, FMCSA itself, because of the unreliability of policy accident reports (PARs) that code the presence of fatigue, augmented its estimate of fatigue-related crashes by the use of other methods to reach a much greater quantified fatigue contribution to fatal fatigue-related crashes in the 2000 HOS Notice of Proposed Rulemaking, *op. cit.*, and in its accompanying *Preliminary Regulatory Evaluation and Regulatory Flexibility Act Analysis* (PRE):

> There are a number of difficulties police face in determining whether fatigue contributed to an accident. First, the responding officer's primary concern is assisting accident victims and restoring the flow of traffic. Investigating the causes of the accident is often a second (or lower) level concern. Second, few officers are trained in accident reconstruction, and they therefore do not have the training to conduct a detailed investigation of the physical and mechanical evidence. Therefore, many police officers must rely on eyewitness and other oral evidence.
>
> This results in an additional problem. By the time an officer interviews surviving crash-involved drivers, any signs of fatigue are likely to have worn off. The stress of the crash produces an adrenaline surge, eliminating any traces of fatigue and in fact enhancing the drivers [*sic*] sense of alertness and awareness and acuity, at least for the short term.

PRE at 21.

The FMCSA points out that FARS data coders "must rely on the original police accident report[,]" but that "[f]atigue, of course, is particularly difficult to assess, even with in-depth investigations, since there is no physical evidence of fatigue. The assessment is usually based on statements of the involved parties or witnesses." *Id.* at 25.

Furthermore, the agency argues that fatigue crashes are probably underestimated because it may often play a less direct role in triggering a crash given the fact that "a sizable literature demonstrates that fatigued individuals are prone to a variety of mental and physical errors[,]" including studies that show that cognitive functions of tired drivers are more compromised than their physical performance. *Id.* at 22. This indicates that other errors indicated on a PAR may be also due to fatigue because this impairment produces low vigilance or alertness. *Id.*

[150] Both the Senate Report 109-293 (July 26, 2006) and the House Report 109-495 (June 9, 2006) accompanying H.R. 5576, pending legislation for appropriations to the U.S. Department of Transportation and its modal administrations, strongly criticize FMCSA for its chronically poor performance in conducting motor carrier safety compliance reviews. The Senate report specifically directs the agency to increase the number of CRs. The House report states its concern that the Congress is not convinced that the safety compliance review process actually stops dangerous motor carriers and drivers from operating.

[151] 49 U.S.C. § 521 note.

[152] TEA-21 § 4015. Those new penalty amounts were adopted by administrative action and incorporated in 49 CFR Pt. 386, Appendices A and B. FMCSA also periodically adjusts penalty amounts in accordance

with the Federal Civil Penalties Inflation Adjustment Act of 1990, P.L. 101-410 (Oct. 5, 1990), as amended by the Debt Collection Improvement Act of 1996, chapter 10 of the Supplemental Appropriations Act of 1996, Title III of the Act Making Appropriations for Fiscal Year 1996 To Make A Further Downpayment Toward A Balanced Budget and for Other Purposes, P.L. 104-134 (Apr. 26, 1996). The most recent action to increase penalty levels was taken in 2003. *See* 68 FR 15381 *et seq.* (Mar. 31, 2003). It should also be noted here that FMCSA has also implemented Section 206 of the MCSIA by implementing through final rule the statutory requirement that a motor carrier that fails to pay civil penalties or fails to abide by agreed payment requirements shall not operate in interstate commerce. The final rule also suspends the registration of a broker, freight-forwarder, or for-hire motor carrier that has not paid a civil penalty or abided by a payment agreement. 65 FR 78422 *et seq.* (Dec. 12, 2000).

[153] "Significant Improvements in Motor Carrier Safety Program since 1999 . . .," *op. cit.*

[154] *Id.* Unfortunately, rulings by FMCSA's Chief Safety Officer in November 2003 that the agency had failed to comply with its own September 2000 policy to give motor carriers sufficient notice of how subsequent violations of the same or related regulations trigger the maximum penalties resulted in subsequent FMCSA action of inserting new language into its Notice of Claim form to cover motor carriers' admissions of liability. This had a negative impact on motor carrier enforcement because violations assessed in enforcement cases closed before March 2004 not meeting the revised policy criteria are not considered in establishing a pattern of violations. As the Deputy Inspector General's report emphasizes, this effectively delayed the 6-year timeframe for accruing violations by 4 years so that motor carriers that actually committed violations from September 2000 to March 2004 were given a clean slate – no violations of record during the period were germane to the penalty levels that could be entertained for any violations committed after March 2004. *Id.* at 6.

[155] *Id.*

[156] *Id.*

[157] This problem is a prominent concern in the ensuing review of the Motor Carrier Safety Assistance Program. FMCSA's educational and outreach programs also have no validated quantitative measures of effectiveness, and, as a result, it is difficult to determine whether these program efforts and expenditures have any affirmative compliance effects or actually reduce CMV crashes, issues considered in the next Section of the Report.

[158] "Significant Improvements in Motor Carrier Safety Program since 1999 Act . . .," *op. cit.*

[159] P.L. 97-424, 96 Stat. 2079, 2154.

[160] Pub. L. 109-59 (Aug. 10, 2005).

[161] This issue has serious safety implications that are receiving continuing investigation by Advocates. In the December 2005 GAO report, "Large Truck Safety: Federal Enforcement Efforts Have been Stronger since 2000 . . .," *op. cit.*, the Congressional investigators noted that the generally inadequate FMCSA oversight of state MCSAP efforts included the review of only 19 of state grantees over a 3-year span. Most importantly, GAO notes that a major issue that was cited in these completed reviews was the incompatibility of various state motor carrier safety regulations with federal regulations, a baseline condition for receiving MCSAP funds. That compatibility of state with federal motor carrier safety regulations, is not, however, a lockstep demand – variations are permitted through the application of the "Tolerance Guidelines," 49 CFR § 350.341. Departures from the FMCSR fall into two categories, first, those that are specifically provided for in the Tolerance Guidelines, such as the specific variances from the values for commercial driver tour of duty hours, tour of duty "restart" time, length of a workday, and shift driving time for truck drivers operating wholly intrastate. *See, id.*, § 350.341(e). The other is directive language concerning the extent to which a state may retain exemptions from motor carrier safety laws and regulations in effect before April 1988 that are still in effect that apply to specific industries operating wholly intrastate (*id.* § 350.341(c)) and grandfathering provisions in state laws and regulations "if such exemptions are uniform or in substantial harmony with the FMCSRs and provide an orderly transition to full regulatory adoption at a later date." *Id.* § 350.341(g). A cursory review of some variances in state motor carrier law and regulation from the federal model shows that some of these departures from the FMCSR may not be adequately justified, including their legitimacy under the general grandfathering provision of the Tolerance Guidelines. These discrepancies warrant a major investigative effort to make clear the extent to which federal motor carrier safety goals are being frustrated because there are excessive variances from the FMCSR that are not justifiable under the Tolerance Guidelines.

[162] The coordinated audit reports are: AS-FH-4-010; AS-FH-4-012; R5-FH-4-006; R6-FH-4-012; and R7-FH-4-002.

[163] TEA-21, §§ 4002 and 4003.

[164] *Id.*, § 2003.

[165] One of the most comprehensive discussions of MCSAP as amended by TEA-21 is found in the lengthy, detailed preamble explaining the extensive regulatory changes to MCSAP triggered by enactment of TEA-21. *See* 65 FR 15092 *et seq.* (Mar. 21, 2000).

[166] Generally, these are contained in Section 4106 and consist of continuing specific direction to the program for CMV safety programs, including size and weight enforcement, drug interdiction, traffic safety law and regulation enforcement for both CMVs and non-CMVs, and state programs for collecting and reporting timely motor carrier safety data. There is also a specific directive to the states to including licensing training manual narrative on the best practices for CMVs and non-CMVs to operate safely in each other's vicinity. Section 4106 also requires the Secretary to submit an annual report to Congress that analyzes and documents the most effective CMV safety programs.

[167] Section 4110 of SAFETEA-LU authorizes 100 percent reimbursable federal funding for any state sharing an international border to carry out CMV safety programs, including related enforcement projects and activities.

[168] "Surface Transportation Safety: Motor Carrier Safety and Related Matters, Statement of the Honorable Kenneth M. Mead," *op. cit.*

[169] "Surface Transportation Safety: Motor Carrier Safety and Related Matters . . ., *op. cit.*

[170] "Improvements Needed in Motor Carrier Safety Status Measurement System," *op. cit.*

[171] "Large Truck Safety: Federal Enforcement Efforts Have Been Stronger since 2000, but Oversight of State Grants Needs Improvement," *op. cit.*

[172] There are 56 grantees because other jurisdictions are added to the 50 states and District of Columbia, including Guam, the Northern Marianas, Puerto Rico, *etc.*

[173] But the unresolved question is whether even a substantial increase in annual CRs can be shown to produce quantifiable benefits in CMV safety and regulatory compliance, especially given the current agency registration level of interstate motor carriers at about 680,000. GAO notes in the December 15, 2005, report that the agency uses analytical models to estimate how many crashes, injuries, and fatalities would occur if the enforcement programs were not in place. For example, FMCSA claims that the 9,200 CRs conducted in 2002 prevented 1,400 crashes, 1,100 injuries, and 60 fatalities over the ensuring 12 months. There is some doubt, however, how empirically reliable or independently demonstrable these claims are, especially when contrasted with the OIG finding in its 1999 report that carriers with Conditional or Unsatisfactory ratings continued to experience high levels of crashes, deaths, and injuries.

[174] "Large Truck Safety: Federal Enforcement Efforts . . .," *op. cit.*

[175] GAO/RCED-00-189, July 17, 2000.

[176] The OIG's February 23, 1999, testimony before the United States House of Representatives, *op. cit.*, found that a major Texas border crossing, El Paso, had an average of 1,300 Mexican trucks seeking entry into the U.S. each day, but had only one inspector on duty who inspected as few as 10 trucks each day.

[177] *Id.*

[178] The "border zones" in the four southwestern states, California, Arizona, New Mexico and Texas, are areas that vary in size between 3 and 20 miles from U.S. border town and city northern limits, depending on each town or city population.

[179] There are 5 Mexico-domiciled, Mexican-owned motor carriers "grandfathered" to operate outside the border zones, following the moratorium of the Bus Regulatory Reform Act of 1982, because they received operating authority from the Interstate Commerce Commission prior to that legislation. These motor carriers received permanent authority to operate in the U.S. conditioned on their continuous compliance with U.S. insurance and safety regulations. There is also one Mexico-domiciled, Mexican-owned motor carrier that is using the U.S. solely as a transiting jurisdiction to reach Canada. *See, Mexico-Domiciled Motor Carriers*, U.S. DOT, Office of the Inspection General, Report Number TR-2000-013, November 4, 1999.

[180] The Bus Regulatory Reform Act of 1982, § 6, P.L. 97-261 (Sept. 20, 1982), *codified at* 49 U.S.C. § 31138.

[181] Memorandum of President, Memorandum for the Secretary of Transportation [and] the United States Trade Representative, 60 FR 12393 (Mar. 2, 1995), *see also* 49 U.S.C. § 13902 note. The ICC Termination Act of 1995 (ICCTA), Pub. L. 104-88 (Dec. 29, 1995), maintained the moratorium restrictions, subject to the modifications made by the President prior to enactment of the ICCTA, and authorized the President to make further modifications to the moratorium.

[182] Congressional ratification of the treaty occurred in late 1993, with the House approving NAFTA on November 17, 1993, and the Senate on November 20, 1993.

[183] Under the original negotiated timeline, the U.S. and Mexico agreed to first permit CMV access to each other's border states by December 18, 1995. All restrictions on regular route, scheduled cross-border bus service was to occur by January 1, 1997, with full reciprocal access beyond border states in each country by January 1, 2000.

[184] 57 FR 31454 *et seq.*, July 16, 1992.

[185] Advocates prepared a detailed comparison of the U.S. CDL with the Mexican LFC clearly showing the lower standards allowed for securing a LFC as compared with the more stringent U.S. CDL. The comparison reveals that there is not an equivalent system for commercial license revocation or suspension, including a system that counts revocation or suspension of a non-CMV driver license which, in the U.S., now is part of the criteria for applying the stringent U.S. penalties for CDL suspension, revocation, or temporary or permanent commercial driver disqualification. Subsequent to the U.S.-Mexico Memorandum of Understanding, Congress enacted additional CDL requirements in both TEA-21 and in the MCSIA.

[186] *See*, NAFTA Arbitral Panel Findings and Recommendations, USA-MEX-98-2008-01, February 6, 2001. NAFTA has permitted each of the three countries to continue to establish its own laws and regulations uniquely tailored to its national perspective on CMV safety, including vehicle safety design and operating safety. This allows each nation to prescribe which vehicles with defined safety characteristics and operating requirements can be permitted to operate within its borders.

[187] NAFTA explicitly requires that each host country is responsible for ensuring that foreign motor carriers comply with the host country's safety regulations upon entry. However, there is little evidence that Mexico has designed and implemented an appropriate CMV safety enforcement effort since NAFTA. Even unilateral U.S. efforts to fortify Mexico's inspection program ultimately met with defeat. Beginning in 1991, U.S. DOT provided about $278,000 to train Mexican truck inspectors. From 1993 to 1995, about 285 Mexican CMV inspectors received the necessary 2-week certification course. However, the lead U.S. trainer said that these efforts proved unsuccessful because, as of late 1996, only about 50 of these inspectors were still employed by the Mexican truck inspection agency, and no regular truck inspection activity ever took place in Mexico as a result of this training. *See*, *Commercial Trucking: Safety Concerns about Mexican Trucks Remain even as Inspection Activity Increases,* U.S. General Accounting Office. GAO/RCED-97-68, April 9, 1997. There still is no firm evidence that a reliable CMV safety and oversight program has been instituted in Mexico. Mexican government officials have stated that their country's emphasis will be placed on inspecting trucks coming into Mexico rather than trying to ensure the safety of trucks leaving Mexico to enter the U.S. *Id.*

[188] *Commercial Trucking: Safety and Infrastructure Issues under the North American Free Trade Agreement*, U.S. General Accounting Office, GAO/RCED-96-61, February 29, 1996.

[189] The safety rationale for continuing the moratorium was stated on several occasions, including its clear expression in a speech made by President Clinton on October 7, 1999, at the Labor Research Association's Labor Awards meeting:

> . . . I don't intend to allow the trucking rules to be changed until there's safety there that we can know about. . . The problem I have is that it's too hard to enforce the rules. This is a rule we still have control of, and 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 that the rules are followed before I follow the rules on this. I think that's important.

See, the 1999 OIG report, "Mexico-Domiciled Motor Carriers," *op. cit.*

[190] Harmonization activities took place within the Land Transportation Subcommittee

[191] For example, Advocates sent a detailed statement to the Land Transportation Standards Subcommittee Working Group Number Two on September 28, 1994, objecting to any effort to raise U.S. limits on CMV sizes and weights because it would reduce highway safety and adversely impact highway infrastructure preservation and restoration. National CMV safety organizations also repeatedly testified before Congress on the chronic inadequacies of U.S. CMV border safety oversight and safety compliance deficiencies of Mexico-domiciled motor carriers. *See, e.g.*, *Statement of Jacqueline S. Gillan, Vice-President, Advocates for Highway and Auto Safety, before the Highways and Transit Subcommittee of the House Committee on Transportation and Infrastructure*, July 9, 2002.

[192] It is useful to list the most relevant reports and testimony in a single location, although some of them will be specifically cited in this review of NAFTA and the operation of long-haul Mexico-domiciled motor carriers in the U.S.:

- "Commercial Trucking: Safety and Infrastructure Issues under the North American Free Trade Agreement," *op. cit.*

- "Commercial Trucking: Safety Concerns about Mexican Trucks Remain even as Inspection Activity Increases," *op. cit.*
- *Commercial Passenger Vehicles: Safety Inspection of Commercial Buses and Vans Entering the United States from Mexico*, U.S. General Accounting Office, GAO/RCED-97-194, August 8, 1997.
- *Motor Carrier Safety Program for Commercial Trucks at U.S. Borders*, U.S. Department of Transportation Office of the Inspector General, Report Number TR-1999-034, December 28, 1998.
- "Surface Transportation Safety: Motor Carrier Safety and Related Matters," *op. cit.*
- "Motor Carrier Safety Program: Federal Highway Administration," *op. cit.*
- "Mexico-Domiciled Motor Carriers," *op. cit.*
- *U.S.-Mexico Border: Better Planning, Coordination Needed to Handle Growing Commercial Traffic*, U.S. General Accounting Office, GAO/NSIAD-00-25, March 3, 2000.
- *Interim Report on Status of Implementing the North American Free Trade Agreement's Cross-Border Trucking Provisions – Federal Motor Carrier Safety Administration*, U.S. Department of Transportation Office of the Inspector General, Report Number MH-2001-059, May 8, 2001.
- "Motor Carrier Safety at the U.S.-Mexico Border," *op. cit.*
- *Motor Carrier Safety at the U.S.-Mexico Border – Federal Motor Carrier Safety Administration*, U.S. Department of Transportation Office of the Inspector General, Report Number MH-2001-096, September 21, 2001.
- *North American Free Trade Agreement: Coordinated Operational Plan Needed to Ensure Mexican Trucks' Compliance with U.S. Standards*, U.S. General Accounting Office, GAO-02-238, December 21, 2001.
- *Implementation of Commercial Vehicle Safety Requirements at the U.S.-Mexico Border – Federal Motor Carrier Safety Administration*, U.S. Department of Transportation Office of the Inspector General, Report Number MH-2002-094, June 25, 2002.
- *Implementation of Commercial Motor Carrier Safety Requirements at the U.S.-Mexico Border*, Statement of the Honorable Kenneth M. Mead, Inspector General, U.S. Department of Transportation, before the Committee on Appropriations, Subcommittee on Transportation; Committee on Commerce, Science, and Transportation, Subcommittee on Surface Transportation and Merchant Marine, United States Senate, June 27, 2002.
- *Follow-Up Audit on the Implementation of Commercial Vehicle Safety Requirements at the U.S.-Mexico Border – Federal Motor Carrier Safety Administration*, U.S. Department of Transportation Office of the Inspector General, Report Number MH-2003-041, May 16, 2003.
- *Follow-Up Audit of the Implementation of the North American Free Trade Agreement's (NAFTA) Cross Border Trucking Provisions – Federal Motor Carrier Safety Administration*, U.S. Department of Transportation Office of the Inspector General, Report Number MH-2005-032, January 3, 2005.

[193] *See*, "Motor Carrier Safety Program for Commercial Trucks at U.S. Borders," *op. cit.*

[194] The OIG has repeatedly found that there is a direct correlation between the condition of Mexico-domiciled trucks entering the U.S. commercial zones and the level of inspection resources at the border, with California's great investment of resources resulting consistently in the lowest rate of OOS orders.

[195] TEA-21, § 4003. Also *see*, TEA-21, § 4029, which requires U.S. DOT to maintain the level of inspectors on the border that had been assigned as of September 30, 1997.

[196] TEA-21, § 4028.

[197] FMCSA took steps to stop this practice by issuing a rule requiring the states to enforce operating authority requirements as a participating qualification under MCSAP, giving the states until the end of fiscal year 2003 to enact legislation to ensure that such enforcement is carried out. 65 FR 15092 *et seq.* (Mar. 21, 2000).

[198] Since these Mexico-domiciled carriers were detected by roadside inspections that reviewed only a very small percentage of vehicles on the road, it is probable that the proportions of the violations were far larger than revealed by the agency's inspection data. *See*, the November 1999 DOT OIG report, "Mexico-Domiciled Motor Carriers," *op. cit.*

[199] Those inspections carried out in California were conducted entirely by state personnel – no federal inspectors were assigned to augment state enforcement efforts. *Id.*

[200] *Id.*

[201] *See*, March 2000 DOT OIG report, "U.S. – Mexico Border," *op. cit.*

[202] Testimony of Secretary of Transportation Norman Y. Mineta before the Senate Commerce, Science and Transportation Committee, July 18, 2001.

[203] In response to a 1998 challenge made by the Mexican government to the U.S.'s continuation of the moratorium on opening the U.S. to full interstate operations by Mexico-domiciled motor carriers, the NAFTA Arbitral Panel issued a ruling on February 6, 2001, *op. cit.*, which, in Section 300, explicitly endorsed the right of the U.S. to apply a case-by-case safety evaluation for Mexico-domiciled motor carriers to determine whether they comply with the requirements of the FMCSR, that the safety evaluation could use unique criteria issued by the U.S., and that the U.S. had the explicit right under NAFTA to bar any Mexican motor carrier from operating in the U.S. because of a failure to abide by U.S. safety requirements.

[204] *See*, the DOT OIG report of May 8, 2001, "Interim Report on Status of Implementing the North American Free Trade Agreement's Cross-Border Trucking Provisions," *op. cit.*

[205] During the late 1990s and early years of the new century, Advocates issued several alerts and authored publicly-disseminated advisories listing the several major needs for improved motor carrier safety oversight at the U.S-Mexico border crossings. *See*, for example, *Commercial Motor Vehicle Safety Initiatives to Be Undertaken by the United States and Mexico Prior to Unrestricted Access by Mexican Trucks and Buses to U.S. Highways*, March 23, 2001.

[206] FMCSA stated that it would accept or reject applications solely on the basis of the "correctness, completeness, and adequacy of information," without any separate effort by the agency to verify the statements made by Mexico-domiciled motor carriers. 66 FR 22328, 22333, May 2, 2001.

[207] FMCSA issued three major rulemakings in mid-2001 to address the southern border safety issues for Mexico-domiciled motor carriers operating in the U.S.:

- "Revision of Regulations and Application Form for Mexico-Domiciled Motor Carriers to Operate in U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border," Notice of Proposed Rulemaking, 66 FR 22328 *et seq.*, May 2, 2001.
- "Application by Certain Mexican Motor Carriers to Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border, Notice of Proposed Rulemaking, 66 FR 22371 *et seq.*, May 3, 2001.
- "Safety Monitoring System and Compliance Initiative for Mexican Motor Carriers Operating in the United States," 66 FR 22415 *et seq.*, May 3, 2001.

The IG called on FMCSA to revise and improve these proposals in his testimony before Congress on July 18, 1991, *op. cit.* Among the many recommendations the IG made was to call upon FMCSA to adopt the crucial revision to prevent conditional operating authority to be granted before a full safety review was performed and each vehicle and driver actually inspected before entering the U.S. FMCSA's proposed rules were little more than a paper exercise that would allow Mexico-domiciled motor carriers to operate both in the border zones and nationwide without any assurance of a previous safety evaluation or even an inspection of vehicles and drivers at border crossing points. Also, *see*, comments of Advocates for Highway and Auto Safety (logged into the dockets under the name Gerald A. Donaldson) dated July 2, 2001, filed in DOT dockets No. FMCSA-1998-3297-193, 1998-3298-172, and 1998-3299-177.

[208] A later oversight report issued by the DOT OIG in December 2001 showed some progress in Mexico's efforts to institute roadside inspections, operating safety standards, and reporting systems for crashes and safety audits. However, the implementation status of these efforts is still unclear and some of the databases, such as crash reporting, only record crashes occurring on Mexican federal highways, and not on state or municipal roads. The federal road system in Mexico constitutes a very small percentage of the total surface mileage used by trucks. Similarly, the DOT OIG found that the Mexican commercial driver license database covered less than one-quarter of Mexico's commercial drivers. *See*, "North American Free Trade Agreement: Coordinated Operational Plan Needed to Ensure Mexican Trucks' Compliance with U.S. Standards," *op. cit.*

[209] "Motor Carrier Safety at the U.S.-Mexico Border," *op. cit.*

[210] P.L 107-87 (Dec. 18, 2001).

[211] *Id.*, Title III, § 350, *codified at* 49 U.S.C. § 13902 note (2004).

[212] FMCSA made a commitment to exceed this legislative requirement in its *Regulatory Analysis and Regulatory Flexibility Analysis* (R.A) accompanying the interim final rule on the safety monitoring system for Mexican motor carriers. 65 FR 12758 *et seq.* (Mar. 19, 2002), FMCSA also affirmed that it would conduct all safety evaluations at Mexican motor carrier places of business. R.A. at 15.

[213] "Implementation of Commercial Vehicle Safety Requirements at the U.S.-Mexico Border," *op. cit.* The findings of this report were summarized two days later by the OIG in testimony before Congress. *Implementation of Commercial Motor Vehicle Safety Requirements at the U.S.-Mexico Border*, State of the Honorable Kenneth M. Mead, Inspector General, U.S. Department of Transportation, before the Committee on Appropriations, Subcommittee on Transportation, and the Committee on Commerce, Science, and Transportation, Subcommittee on Surface Transportation and Merchant Marine, United States Senate, June 27, 2002.

[214] The safety monitoring system was issued by FMCSA as an interim final rule, with public comment solicited only after the rule took effect. 67 FR 12758 *et seq.* (Mar. 19, 2002). Advocates filed comments disagreeing with several agency decisions on the content and operation of the monitoring system. Among these was the FMCSA decision to exclude HOS violations as a specific basis for prompting an expedited safety or compliance review or for issuing an agency demand for corrective safety management and compliance actions. Comments of Advocates for Highway and Auto Safety, dated April 18, 2002, filed with DOT docket No. FMCSA-1998-3299-282 and 3299-284.

[215] FMCSA issued a staff memorandum on April 3, 2002, adopting the policy that Mexican long-haul carriers must comply with U.S. HOS rules. However, this policy does not address the residual problem of Mexican drivers already entering the U.S. fatigued and sleep-deprived. Apparently, Mexico does not have specific commercial drivers HOS regulations, but covers truck and bus drivers with the same general 8-hour work day limit used for all workers in Mexico. It is unknown how well this limit is enforced. It should be noted that the OIG had previously determined that Mexican drayage drivers were violating the U.S. HOS regulation even within the border zone.

[216] "Follow-Up Audit on the Implementation of the Commercial Vehicle Safety Requirements at the U.S.-Mexico Border," *op. cit.*; "Follow-Up Audit of the Implementation of the North American Free Trade Agreement's (NAFTA) Cross Border Trucking Provisions," *op. cit.*, January 3, 2005. Section 350 directed the OIG to conduct repeated audits of FMCSA compliance with these legislated requirements every 180 days. Section 350 has also been annually included in each fiscal year's appropriations legislation for the U.S. DOT. Therefore, it can be anticipated that another OIG follow-up audit report would be issued sometime in mid-2006.

[217] During this period of time, an allied issue involving air quality and diesel emissions led Public Citizen to file suit against the U.S. DOT on the basis that proper Clean Air Act analysis and Environmental Impact Statements had not been properly completed. The U.S. Court of Appeals for the Ninth Circuit issued a decision on January 16, 2003, agreeing with the plaintiff that environmental requirements had not been fulfilled. *Public Citizen* v. *DOT*, 316 F.3d 1002 (9th Cir. 2003). The practical effect of the appellate decision was the suspension of FMCSA action to conduct safety audits and compliance reviews. Subsequently, the U.S. Supreme Court reversed the Ninth Circuit ruling, *see Department of Transportation et al., v. Public Citizen, et al.*, No. 03-358 (June 7, 2004), clearing the way for continuing efforts with the Mexican government to open the U.S. border to long-haul bus and truck operations conducted by Mexico-domiciled motor carriers. However, no access to Mexican motor carrier places of business has yet been granted to U.S. inspection and safety audit personnel, although there have been negotiations to conclude a Memorandum of Understanding between the U.S. and Mexico to permit such access.

[218] Statement of Joan Claybrook, President, Public Citizen, on behalf of Public Citizen, Citizens for Reliable and Safe Highways, Parents against Tired Truckers, and Advocates for Highway and Auto Safety, before the Surface Transportation and Merchant Marine Subcommittee, Committee on Commerce, Science, and Transportation, United States Senate, June 10, 2003.

[219] Federal law requires that all vehicles, including trucks and buses, sold, imported, or introduced into interstate commerce in the U.S. must be certified by the manufacturer as meeting the applicable federal motor vehicle safety standards (FMVSS) at the time the vehicle was built. 49 U.S.C. §§ 30112, 30115. Federal law also requires the manufacturer to attach a certification label to the vehicle. 49 C.F.R. § 567. This legal requirement applies to all U.S. produced vehicles as well as vehicles produced in Mexico and Canada that enter the U.S. under the North American Free Trade Agreement (NAFTA). NHTSA specifically determined in 1975 that commercial vehicles entering the U.S. to conduct trade and commerce, including passenger transportation, were covered by these certification requirements. The reason for manufacturer certification is to assure that vehicles operated in the U.S. comply with the safety standards required at the time they are built and sold. For example, if a truck is not equipped with antilock brakes the manufacturer cannot certify that the truck meets the current motor vehicle safety standards.

In the past, most foreign-built trucks and buses were not intended for use in the U.S. did not have to meet U.S. safety standards or be certified as complying with the FMVSS. The original manufacturers did not certify or label the vehicles built exclusively for the Canadian or Mexican market as complying with U.S. standards. While Canada has established a comparable certification and labeling requirement, most of the trucks and buses now entering the U.S. from Mexico lack the legally required safety certification and label.

According to information supplied by Mexican vehicle manufacturers in 2002, about one-third of the 400,000 trucks produced in Mexico that use the Mexican federal road system were built to U.S. standards, even though the vehicles were not certified as complying with the FMVSS. There is no public documentation of this estimate. Mexican manufacturers also say that since 1995 many Mexican-built trucks and buses have been built to comply with U.S. standards, but again, there is no documentation of this claim.

In 1995, DOT advised the NAFTA signatory nations that U.S. law prohibits the entry of vehicles that were not certified as meeting U.S. safety standards. This information was included in a NAFTA Operating Requirements Handbook. DOT and other agencies with border jurisdiction have ignored this violation of federal law allowing Mexico-domiciled motor carriers to operate non-certified trucks and buses in U.S. border zone areas.

In 2002, the FMCSA issued a proposed rule that would have required commercial vehicles entering the U.S. from Mexico to comply with the certification law. 67 FR 12782 (Mar. 19, 2002). The proposal also gave Mexico-domiciled carriers that were already operating across the border a two-year grace period before actual compliance was mandated, a clear violation of federal law that FMCSA had no authority to grant. Congress subsequently prevented FMCSA from expending any funds to implement the two-year certification grace period. Consolidated Appropriations Act of 2005, § 132, Pub. L. 108-447 (Dec. 8, 2004). Ultimately, FMCSA withdrew the proposed rule in its entirety. 70 FR 50269 *et seq.* (Aug. 26, 2005). This action was predicated on the NHTSA's simultaneous decision to revoke its longstanding policy decision of 30 years that determined that foreign commercial vehicles entering the U.S. had to comply with federal certification requirements. 70 FR 50277, *et seq.* (Aug. 25, 2005). As a result, while the federal certification law remains in effect, its application to foreign motor carriers is uncertain and is not being enforced.

[220] *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001* (USA Patriot Act), Pub. L. No. 107-56, 115 Stat. 272 (2001), codified in scattered titles of U.S.C.

[221] Implementing regulations were published by FMCSA in an interim final rule, 68 FR 23844 *et seq.*, May 5, 2003. Also *see*, the review of the effectiveness of those requirements in the Statement of Todd J. Zinser, Deputy Inspector General, *Background Checks for Holders of Commercial Drivers Licenses with Hazardous Materials Endorsements*, Office of the Inspector General, U.S. Department of Transportation, before the Subcommittee on Highways, Transit, and Pipelines, Committee on Transportation and Infrastructure, U.S. House of Representatives, May 11, 2005.

[222] This implies that the LFC, the Mexican commercial driver license, may not be equivalent to the U.S. CDL with its separate hazmat endorsement requirement for a driver background security check. In turn, this implies that the U.S.-Mexican government commercial driver license MOU of 1991 declaring equivalence may be outdated and in need of revision.

[223] This is verified in the OIG's latest briefing paper on compliance with Section 350 of the FY2002 appropriations legislation, *Briefing to Congressional Staff on Audit Work Regarding Implementation of the North American Free Trade Agreement's (NAFTA) Cross Border Trucking Provisions,* Office of the Inspector General, Surface and Maritime Programs, U.S. Department of Transportation, March 1, 2007.

[224] *Highway Safety: Further Opportunities Exist to Improve Data on Crashes Involving Commercial Motor Vehicles*, GAO-06-102, November 18, 2005.

[225] *Improvements Needed in the Safety Status Measurement System*, Report Number MH-2004-034, Office of the Inspector General, United States Department of Transportation, February 13, 2004.

226 *Significant Improvements in Motor Carrier Safety Since 1999 but Loopholes for Repeat Violators Need Closing*, Report Number MH-2006-046, Office of the Inspector General, United States Department of Transportation, April 21, 2006.

[227] "Motor Carrier Safety Program: Federal Highway Administration," *op. cit.*

[228] *See*, "Large Truck Safety: Federal Enforcement Efforts Have Been Stronger since 2000, but Oversight of State Grantees Needs Improvement," *op. cit.* It should be noted once again in this new section of our review of FMCSA performance since inception of the agency in 1999 that the OIG, as we showed in our

evaluation of the FMCSA's border safety oversight and enforcement effort, repeatedly found a direct relationship between the intensity of the border inspection effort and resulting rates of OOS orders issued to Mexico-domiciled motor carriers.

[229] *See*, "Share the Road Safely" transfer of the program from FMCSA to NHTSA in S. Rpt. No. 108-146, 108th Cong., 1st Sess., September 8, 2003, at 69, 74.

[230] *See*, "Education and Outreach," H.Rep. 671, 108th Cong., 2d Sess., at 52-53 (2004).

[231] MCSIA, § 210, *amending* 49 U.S.C. § 31144.

[232] 67 FR 31978 *et seq.*, (May 13, 2002). Advocates has consistently opposed FMCSA's repeated use of interim final rules to issue important regulations. The Administrative Procedure Act generally requires agencies to provide public notice of a proposed rule and take public comment into account before issuing a final rule. FMCSA, as OMC before it, has too often relied on issuing an interim final rule which only provides the public with notice of the agency's decisions at the same time the agency issues its final rule. While after-the-fact public comment is requested, FMCSA has rarely, if ever, revised an interim final rule based on subsequent comment. More grievous is the fact that in many instances, it is the agency's delay in responding to a legislative mandate that places it in the position of having an insufficient amount of time to issue a regulation by the required statutory deadline. Thus, resorting to the expedient option of issuing an interim final rule with an immediate effective date, along with a belated comment period, rather than affording the public the opportunity to provide comment in response to a notice of proposed rulemaking and prior to the issuance of a final rule, is frequently within the agency's control. If the agency responded to its regulatory mandates in a timely manner, there would be no need, in most cases, for FMCSA to justify short-circuiting the rulemaking process.

[233] FY 2002 DOT Appropriations Act, § 350.

[234] *See e.g.*, Comments of Advocates for Highway and Auto Safety, dated July 12, 2002, filed with DOT docket No. FMCSA-2001-11061-22. In those comments, as well as in responses to the several other FMCSA rulemaking proposals concerning the process for awarding operating authority to Mexico-domiciled motor carriers, Advocates emphasized that the agency was engaging in merely a paper review and awarding operating authority without any actual safety review of the applicant carriers.

[235] 49 U.S.C. Chap. 311, Subchap. III.

[236] *See*, above, footnote 68 and the discussion of FMCSA's failures in conducting CRs and assigning safety ratings in Section III.

[237] MCSIA Section 210(b).

[238] 67 FR 31978, 31980.

[239] "Significant Improvements in Motor Carrier Safety Program since 1999 Act but Loopholes for Repeat Violators Need Closing," *op. cit.*

[240] *Federal Motor Carrier Safety Administration: Education and Outreach Programs Target Safety and Consumer Issues, but Gaps in Planning and Evaluation Remain*, GAO-06-103. December 19, 2005. GAO did not evaluate the Share the Road Safely program either in this report or in its companion report cited earlier on the quality of FMCSA's enforcement activities. *See*, "Large Truck Safety: Federal Enforcement Efforts Have Been Stronger since 2000, but Oversight of State Grants Needs Improvement," *op. cit.* GAO states in the December 19, 2005, report that it held discussions with Congressional staff where it was decided that GAO would not evaluate the Share the Road Safely program for this report. Instead, an evaluation would be deferred until June 30, 2006 in accord with the SAFETEA-LU provision (Section 4127(f)) asking GAO to review the program by that time. However, FAO did state in the prefacing letter to Congress for this report that it had previously raised concerns about FMCSA's education and outreach efforts in its 2003 report showing that the Share the Road Safely program lacked a clear strategy and was only tenuously linked to program goals. Moreover, FMCSA had not appropriately evaluated Share the Road Safely program effectiveness.

[241] "Federal Motor Carrier Administration: Education and Outreach Programs . . .," *op. cit.*

[242] GAO points out in its December 19, 2005, report that new entrants are not entirely immune to CRs during their period of temporary operating authority. A new entrant can be subjected to a CR if it is involved in a fatal crash, subject to a nonfrivolous complaint (not defined by GAO), involved in a hazmat crash, or entered on a FMCSA database that flags carriers with poor safety records. However, GAO does not indicate how often this occurs or how many new entrants have had full CRs conducted during their period of temporary operating authority.

[243] In support of this view, GAO cites a National Safety Council study that found that the largest increases in safety belt use occurred after officers enforced the requirement to wear seat belts.

[244] House Report 109-495, 109th Congress, 2nd Sess., June 9, 2006, at 49.

[245] Senate Report 109-293, 109th Congress, 2nd Sess., July 26, 2006, at 54.

[246] In one truck – one passenger vehicle fatal crashes, 98 percent of those killed are in the passenger vehicles. *Fatality Facts 2004*, Insurance Institute for Highway Safety, Arlington, Virginia, 1995.

[247] *See*, *Motor Carrier Safety Analysis, Facts, & Evaluation (MCSAFE)*, 2:1 (October 1996), 2:11 (November 1996). Also *see*, the Research Analysis Brief published by FHWA, *Driver-Related Factors in Crashes between Large Trucks and Passenger Vehicles*, FHWA-MCRT-00-001, April 1999, in which the agency states that it is unknown the extent to which the drivers of the trucks and of the cars were both able to accurately describe events to investigating officers following the fatal crashes. Moreover, the agency admits that only one-half of the fatal crashes between one large truck and on passenger vehicle even has any physical evidence about each vehicle's maneuver and physical position prior to the crash for supporting assignments of FARS drive codes. *Id.* at 4. As a result, FARS codes are relying on police accident report indications of the presence of fatigue that often are the produce of a surviving party – usually the truck driver – interviews that may not reveal the presence of fatigue.

[248] D. Blower, "The Relative Contribution of Truck Drivers and Passenger Vehicle Drivers in Truck-Passenger Vehicle Traffic Crashes," Center for National Truck Statistics, University of Michigan Transportation Research Institute, UMTRI-98-5, June 1998.

[249] Remarks by Daniel Blower to breakout session attendees on November 16, 2005, Alexandria, Virginia.

[250] Presentation of Ralph Craft, FMCSA, on the LTCCS, *2005 International Truck and Bus Safety and Security Symposium*, Driver Track, Alexandria, Virginia, November 15, 2005.

[251] Ralph Craft, Office of Research and Analysis, FMCSA, at the Transportation Research Board 2006 Annual Meeting, *op. cit.*

[252] Comments of Advocates for Highway and Auto Safety dated February 6, 2004, to Docket No. FMCSA-2003-16324, Share the Road Safety Assessment, Notice and Request for Comments, 68 FR 68446 *et seq.*, December 8, 2003.

[253] Comments of Advocates for Highway and Auto Safety dated April 29, 1999, to Docket No. FHWA-99-1150 (64 FR 10060 *et seq.*, March 1, 1999).

[254] Statement of Phyllis Scheinberg, Director, GAO, before the Subcommittee on Ground Transportation, House Committee on Transportation and Infrastructure, United States Congress, GAO/T-RCED-99-102, March 17, 1999.

[255] In its June 1999 Final Report on the Share the Road Campaign Research Study, FHWA-MC-99-053, FHWA took no notice of any kind of the GAO criticism presented to Congress by the GAO Director in March 1999,

[256] The new GAO evaluation was directed by the House report accompanying the U.S. DOT and Related Agencies Appropriations legislation for fiscal year 2003. H.R. Rept. No. 107-722, at 104 (2002), GAO conducted this second evaluation from January through May 2003.

[257] *Truck Safety: Share the Road Safely Program Needs Better Evaluation of Its Initiatives*, GAO-03-680, May 30, 2003.

[258] Section 4127.

[259] "Truck Safety Enforcement," December 15, 2005, *op. cit.*

[260] Advocates cannot find any detailed information on this Washington state program apart from the statements made by GAO in its December 15, 2005, report to Congress. Although FMCSA has part of its web site devoted entirely to the Share the Road Safely campaign, there is no description of the Washington state pilot program within that web location. *See*, http://www.sharetheroadsafely.org.

STATEMENT OF
JEFFREY N. SHANE
UNDER SECRETARY FOR POLICY
AND
JOHN H. HILL, ADMINISTRATOR OF THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

BEFORE THE HOUSE TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
MARCH 13, 2007

INTRODUCTION

Chairman DeFazio, Ranking Member Duncan, and Members of the Subcommittee, thank you for inviting me today to discuss the Department of Transportation's (DOT's) demonstration project to implement the long-delayed trucking provisions of the North American Free Trade Agreement (NAFTA). I am pleased to describe to you what the Department has done to implement Section 350 of the Fiscal Year 2002 Transportation and Related Agencies Appropriations Act (P.L. 107-87; 115 Stat. 833, 864) and the additional steps we have taken to ensure that we safeguard the safety and security of our transportation network even as we strengthen trade with a close neighbor and important partner.

Fourteen years ago, the United States pledged to allow the free flow of commerce across the North American continent. Three U.S. Presidents and the Congress have considered and ultimately supported NAFTA's trucking provisions and the Supreme Court has rejected unanimously a challenge to the Department's implementation of those provisions, allowing us to make that pledge a reality. Unfortunately, the delay in fully implementing NAFTA's trucking provisions has impeded the efficient movement of goods to the markets on both sides of the southern border to the detriment of the nation's economy. This demonstration project begins a process that will remove this impediment, creating new opportunities, new hope, and new jobs north and south of the border.

BACKGROUND

President George H. W. Bush signed NAFTA in 1992, it was enacted by Congress and signed into law by President William J. Clinton in 1993, and it became effective on January 1, 1994. Now, 13 years after we began implementing the agreement, its economic benefits are clear. U.S. merchandise exports to NAFTA partners have grown more rapidly than our exports to the rest of the world. Real Gross National Product Growth for NAFTA partners for the period 1993 to 2005 has been 48% for the United States, 49% for Canada, and 40% for Mexico. Over that 13-year period, U.S. goods exports to Mexico and Canada have increased nearly twice as fast as our exports to the rest of the world.

Americans are reaping the benefits of this success. Each day, nearly 2.4 billion dollars in trade flows among the United States, Mexico, and Canada, offering consumers greater choices and strengthening trade and investment ties with two democratic nations and longtime allies. U.S. employment has increased substantially as well, rising from 112.2 million in December 1993 to 134.8 million in February 2006. The jobs these exports support are particularly valuable to American workers, as they pay between 13 and 18 percent more than the U.S. national average. All of this helps to explain why, between 1993 and 2006, the nation's real Gross Domestic Product has nearly doubled. This record demonstrates that we must move forward to fully implement NAFTA.

One of the agreement's few remaining provisions to be implemented is the cross-border trucking provision. Originally planned to commence in December 1995 with transportation between Mexico and the four Border States (Arizona, California, New Mexico, and Texas), it was to have been fully implemented by January 1, 2000. In December 1995, Transportation Secretary Peña announced an indefinite delay in "opening" the border to long-haul Mexican commercial trucks to address legitimate concerns about the safety of Mexican trucks that would be traveling on our highways.

Twelve years later these concerns have been addressed and, now that safety and security programs are in place, the time has come for us to move forward on a long-standing promise with Mexico and Canada by taking the trucking provisions of the North American Free Trade Agreement off hold.

DEMONSTRATION PROJECT

Over the last twelve years, there has been a long, on-going conversation about the safety, security, environmental, and economic issues involved with allowing trucks from Mexico to operate in the U.S. beyond the border zones. This conversation has occurred between DOT and Mexico's Ministry of Communications and Transport; it has occurred between the Presidents of our nations; it has occurred in the House and Senate chambers; it has occurred in the media; it has occurred in front of a NAFTA dispute settlement panel, a U.S. Court of Appeals, and even the United States Supreme Court. What this conversation made clear is that there were a number of important and difficult issues that had to be addressed before we could move forward with a graduated border opening.

For that reason, the Administration is implementing a limited one-year demonstration project to authorize up to 100 Mexican trucking companies to perform long-haul operations within the U.S. These companies will be limited to transporting international freight and will not be authorized to make domestic deliveries between U.S. cities. Likewise, under this program, Mexico will grant authority to an equivalent number of U.S. companies to make deliveries between the U.S. and Mexico. This will be the first time that American trucks have been allowed to make deliveries in Mexico in over twenty-five years. The U.S. and Mexican governments have established two groups to provide oversight for the demonstration project. The first, a bi-national group, will provide continuous monitoring of the project and identify and resolve any implementation issues as they arise. The second, an evaluation group composed only of

U.S. representatives knowledgeable with the issue, will be tasked with measuring and evaluating the results of the demonstration project. We believe that this combination of monitoring and oversight will both provide the means for addressing implementation issues in a timely fashion and also an independent means for objective evaluation of the project once it is complete. In addition, we are aware you have asked the Inspector General to conduct a separate review of the demonstration project to ensure the 100 carriers participating in the program are in full compliance with all U.S. federal motor carrier safety laws, including the provisions detailed in Section 350. We welcome the on-going involvement of the Inspector General and any ideas he may have to improve the effectiveness of the program.

By granting authority to a limited number of Mexican carriers and monitoring them closely throughout the duration of the project, we will be able to monitor and evaluate the adequacy of the safety systems we have developed to address the concerns raised since 1995.

There are no exceptions to safety regulations for trucks from Mexico. Mexico's trucks and drivers must meet all U.S. safety requirements before they cross the border now, and before they will be allowed to drive beyond the border region. All drivers must have a valid commercial driver's license, proof of medical fitness, and verification of compliance with hours-of-services rules. They must be able to understand and respond to questions and directions from U.S. inspectors, undergo drug and alcohol testing, and cannot be under the influence of drugs or alcohol. All trucks must be insured by a U.S. licensed insurance company and meet U.S. safety standards.

Let me put the magnitude of this demonstration project in context. Today, over 700,000 interstate trucking companies and approximately 400,000 intrastate companies are registered to operate in the U.S. Over 8 million large trucks are registered in the United States. We expect that the 100 Mexican trucking companies in this program will operate approximately 1,000 trucks in the U.S.

It is also important to note that the demonstration project will not involve hazardous materials transportation, bus transportation of passengers, or operation of longer combination vehicles by Mexican carriers.

SAFETY

Safety is at the heart of all we do at DOT and it has been foremost in our thoughts as we prepared to change the way trucks from Mexico operate in the U.S. Development of our safety programs has been guided by, but not limited to, the 22 requirements that Congress included in the 2002 Act. I can assure you that the Federal Motor Carrier Safety Administration (FMCSA) has addressed each of these requirements and I have attached to the written testimony a table of these requirements and the actions FMCSA has taken to satisfy them.

Two weeks ago, Secretary Peters traveled to Monterrey, Mexico, to visit a Mexican trucking company. There, she witnessed FMCSA personnel conducting a pre-authorization safety audit required by Section 350 on the motor carrier. Under the law, 50 percent of these audits must take place at the carrier's place of business in Mexico. For this demonstration project, FMCSA will conduct 100 percent of pre-authorization safety audits in Mexico. These audits ensure that Mexican carriers wishing to operate in the U.S. beyond the border zones have systems in place to comply with all DOT regulations, including driver qualification, drug and alcohol testing, hours-of-service, vehicle maintenance, and insurance.

During the pre-authority safety audit, FMCSA inspectors also conduct vehicle inspections of trucks a company wishes to use in the U.S. The inspection is a comprehensive 37-step process that involves checking the vehicle from front to back and top to bottom. At the conclusion of this inspection, if no defects are discovered, the vehicle is issued a 90-day Commercial Vehicle Safety Alliance (CVSA) safety decal. All trucks operating in the test program will be required to display a current decal at all times while operating in the U.S., which means they will be inspected at least once every 90 days.

This safety audit is merely the beginning of FMCSA's oversight. All Mexican trucks operating beyond the border zones will have a unique identifier, an X at the end of the DOT number marked on the vehicle. This is so it is easily visible to FMCSA and State inspectors. When these trucks reach the border, they will be subjected to additional vehicle inspections and license checks. Under Section 350, FMCSA is required to check the validity of licenses for 50 percent of the drivers entering the country.

Since 1995, FMCSA has spent more than $500 million to improve border inspection stations and hire more than 600 new Federal and State inspectors to enforce truck safety on the border. We have deployed 125 inspectors and an additional 149 auditors and investigators along the Southern Border at all truck crossings. Our State partners in Arizona, California, New Mexico, and Texas have deployed an additional 349 inspectors. These safety professionals oversee the safety of Mexican trucks providing transportation in the existing border commercial zones and have made noteworthy progress in establishing the safety foundation for this demonstration project. These inspectors conducted more than 210,000 driver and vehicle inspections of Mexico-domiciled carriers in the commercial zone during fiscal year 2006 and performed over 240,000 automated, real-time, checks of Mexican drivers' licenses. Their efforts are paying off. Ten years ago, the out-of-service rate for Mexican trucks was 59 percent. Since the increased enforcement that resulted from hiring the additional FMCSA and State staff, the rate dropped to 21 percent last year, which is comparable to the out-of-service rate we typically observe when we select U.S. trucks for inspection.

I also want to highlight that while these inspectors have been effective and will assist the Department in satisfying its Congressional requirements, we are already looking toward more comprehensive and effective screening methods for the future. FMCSA is working with Customs and Border Protection (CBP) to have motor carrier safety integrated into

the International Trade Data System, or ITDS, which is part of the Automated Commercial Environment development effort. When this initiative becomes fully operational, every Mexican company will have its authority and insurance checked and every Mexican driver will have his or her license checked each time the driver crosses the border, whether the vehicle is operating within the commercial zone or involved in long-haul transportation. In fact, since these computer checks occur prior to a carrier's arrival at the Southern Border, if we discover a problem, we will actually send notice back to the company or broker entering the information so issues can be addressed before the truck even reaches our Southern Border points of entry. If the truck does arrive at the Border, the CBP agent will receive notice that there is an issue with the truck and direct it for further inspection by FMCSA or our State partners.

While in the U.S., the performance of these Mexican carriers will be closely monitored. We have established, through rulemaking, a list of seven safety problems related to driver licensing, operating unsafe vehicles, drug and alcohol testing and insurance – we call them the 7 deadly sins – which would lead to action by FMCSA up to and including revocation of a carrier's provisional authority if not promptly addressed.

FMCSA has worked with State and local law enforcement officials so they can assist in ensuring Mexican trucks operate safely and within the limits of their authority. In 2002, FMCSA established regulations prohibiting all carriers from operating beyond the scope of their authority. Since that time, every State has adopted and begun enforcing these provisions. The Commercial Vehicle Safety Alliance (CVSA) has incorporated this violation into its Out-of-Service criteria, meaning that a Mexican truck discovered operating beyond the scope of its authority will be stopped and not allowed to continue. We have incorporated these new regulations into the training it gives to all commercial vehicle inspectors.

FMCSA and the International Association of Chiefs of Police have developed a commercial motor vehicle awareness training program. We have trained over 200 law enforcement officers to instruct other law enforcement officials about how to identify a Mexican motor carrier, how to verify the validity of a Mexican driver's commercial license, how to determine the carrier is operating within its authority, and who to call if they need additional assistance with truck-specific issues. Through this program, we are reaching out to the more than 500,000 State and local law enforcement officers in the U.S.

In addition to the Federal safety requirements, the Mexican trucks operated in this demonstration project will be required to adhere to the same State requirements as U.S. trucks, including size and weight requirements and paying the applicable fuel taxes and registration fees. In preparation for this project, FMCSA has worked with the four Border States to develop the capability for these States to register Mexican trucks in the International Registration Plan and International Fuel Tax Agreement.

SECURITY AND ENVIRONMENT

While safety is the highest priority, the issues involved in this demonstration project are not limited to safety. For this reason, the Department has coordinated closely with other Executive Branch agencies, particularly with the Department of Homeland Security (DHS) on border security matters and with the Environmental Protection Agency (EPA) to address environmental issues. While these agencies can better speak to their programs in detail, let me share with you an overview of what is being done to address these areas.

The majority of vehicles Mexican trucking companies will use for long-haul operations have been manufactured to meet both U.S. and Mexican emission standards. In fact, most commercial motor vehicles now entering the U.S. from Mexico were manufactured in the U.S. or Canada, meaning that they were manufactured to U.S. emissions standards. As breakdowns are costly for shippers, we expect that the fleet of trucks used for long-haul cross-border transportation will be newer and cleaner. We anticipate that Mexican companies will maintain or expand their use of equipment that is manufactured to meet U.S. standards. Mexico has also upgraded its domestic vehicle emission requirements in the last three years and now has regulations similar to those currently in effect in the United States. EPA is working with the Mexican government to encourage full adoption of new U.S. truck and fuel standards.

On a yearly basis, CBP processes about 4.5 million trucks through the U.S.-Mexico Border. It is estimated that the 100 carriers in this demonstration project will account for approximately 1,000 trucks, a very small percentage of the CBP workload. Implementing this demonstration project will not change our border security or immigration security posture.

Current Processing

All commercial truck cross-border traffic must stop at a designated border crossing. As required by statute and regulation, each truck will be processed at the border, using automated systems to assist in determining whether the cargo, truck, and driver are admissible and whether any of the elements pose a security, immigration, agriculture, or smuggling risk.

If the CBP officer determines that further inspection is necessary, the driver, truck, and cargo are referred for a secondary inspection. In a secondary inspection, CBP officers have many inspection tools at their disposal, including access to commercial, criminal and law enforcement databases, forensic document equipment, agricultural experts, and large scale scanning systems.

If the CBP officer performing primary or secondary inspections determines that the driver, truck, and cargo are admissible and do not pose a risk, then the driver is allowed to proceed into the United States. The Mexican carrier is then able to deliver the cargo to a location within the commercial border zone, which can range up to 25 miles from the

border (or 75 miles from the border within Arizona). The cargo remains within the commercial zone until it can be picked up by a U.S. driver and truck.

Current CBP inspections are in addition and separate from motor carrier inspections. The current CBP inspections and the current motor carrier inspections will continue under the demonstration project.

Demonstration Project
Under the demonstration project, processing of Mexican nationals and commercial trucks will continue according to CBP guidelines. All cross-border commercial truck traffic will continue to be required to stop at a designated border crossing. Mexican drivers will be required to present an entry document, and if traveling outside the 25-mile commercial zone (or 75-mile limit within the state of Arizona), the drivers will be issued a Form I-94 pursuant to regulations and in accordance with US VISIT procedures that include biometric and security requirements.

CBP processing of drivers, cargo, and conveyances for security screening and trade enforcement will remain consistent for truck carriers participating in this demonstration project. Participants will continue to provide advanced cargo information as required under the Trade Act of 2002. Participants will remain subject to immigration entry requirements for the driver and crew and to the import requirements of other government agencies in order to gain entry into United States commerce.

DOT and DHS will continue to partner in this effort to ensure safety and security requirements are completely addressed and satisfied prior to a carrier being allowed to proceed to an interior location in the United States.

CONCLUSION

Trucks from Mexico have always been allowed to cross the U.S. border. Until 1982, they could travel anywhere in the United States. For the last 24 years they have been restricted to specific border areas in Arizona, California, New Mexico, and Texas. Every day, thousands of trucks from Mexico enter the United States. Every day, drivers from Mexico operate safely on roads in major U.S. cities like San Diego, El Paso, Laredo, and Brownsville. And every day, Federal and State inspectors ensure trucks are safe to travel on our roads.

We have developed a limited program to demonstrate the effectiveness of the systems we have deployed to satisfy Section 350 of the 2002 Appropriations Act and to ensure the safety of the U.S. traveling public. And now, we are ready to change the way trucks from Mexico operate in the United States.

Thank you for the opportunity to appear before you today. I look forward to working with this Committee and the transportation community to ensure a safe transportation system for the citizens of the United States and to strengthen our trade with Mexico.

BEFORE THE

SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
UNITED STATES HOUSE OF REPRESENTATIVES

TESTIMONY OF
JAMES P. HOFFA
GENERAL PRESIDENT
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

HEARING ON
U.S. MEXICAN TRUCKING: SAFETY AND THE
CROSS BORDER DEMONSTRATION PROJECT

MARCH 13, 2007

International Brotherhood of Teamsters
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Chairman DeFazio, Ranking Member Duncan, and Members of the Subcommittee:

My name is Jim Hoffa, General President of the International Brotherhood of Teamsters. I am here representing 1.4 million Teamster members and their families who travel our nation's highways every day. Over 600,000 of our members earn their livelihood driving on our roads and city streets delivering goods and services to the American public. They deserve a workplace as safe as any factory or construction worker, but I am fearful that this proposed pilot program to permit Mexican trucks to travel beyond the currently permitted commercial zones will put our members, their families and the traveling public in danger. This action is reminiscent of the Dubai Port debacle, where the Bush Administration is willing to risk our national security by giving unfettered access to America's transportation infrastructure to foreign companies and their government sponsors and ignoring the safety and security of the American people.

We have many questions about how this plan will be implemented to ensure the safety of our highways and protect our homeland security, and I will outline our concerns to you in my testimony that follows. As most of you know, the House voted in 2001 to effectively ban Mexican trucks from traveling beyond the currently permitted commercial zones. The Senate then followed that action by passing a comprehensive safety regime, commonly referred to as the Murray-Shelby provisions, that prevented the DOT from expending money to review applications of Mexican carriers until certain conditions were met. I realize that some progress has been made in reaching those requirements outlined in Murray-Shelby, but I am alarmed that the Department of Transportation (DOT) is moving forward with a pilot program when so many questions remained unanswered.

My first concern is the mystery and contradiction surrounding this pilot program. Secretary Peters was asked at her confirmation hearing about it and said she "had asked the question and there are no immediate plans to do so." The Secretary went on to say "...and if confirmed, would look forward to getting to the bottom of the so-called rumors in addressing the issue." This contradicts DOT's own fact sheet (*Cross Border Truck Safety Inspection Program)* on its website which states that following the U.S. Supreme Court's decision in 2004 to reverse the U.S. Ninth Circuit Court of Appeals ruling that barred implementation of the NAFTA treaty's trucking provision, and I quote, "U.S. DOT began working immediately with its Mexican counterparts to develop a NAFTA trucking **pilot program."** So essentially, this pilot program has been in the works since 2004, but apparently Secretary Peters was not sufficiently briefed about it before her confirmation hearing.

I also believe there is reason to question whether this pilot program conforms to all of the requirements of Section 350 of the 2002 Transportation Appropriations Act (PL 107-87), whether DOT has followed the correct statutory procedures to actually initiate a pilot program for Mexican trucks, and whether this is indeed a true pilot program whose results can be relied upon to give us an accurate assessment of the pilot program after a year's time. The statutory language of Section 350 is very clear there are 12 requirements that DOT must comply with, and 8 additional obligations that DOT's Inspector General must verify. While DOT may argue that it has complied with its 12 requirements, the recent testimony of the DOT Inspector General before the Senate Subcommittee on Transportation, Housing, and Urban Development, and Related Agencies cites two issues - requirements for monitoring Mexican drivers and conducting bus inspections - where additional improvements are needed. While buses are not part of the pilot program, the fact that the statute requires the IG to verify these requirements before "any vehicle owned or leased by a Mexican motor carrier may be permitted to operate beyond United States municipalities and commercial zones" begs the question as to whether the DOT has acted prematurely and without proper statutory authority to conduct this pilot program.

With regard to the pilot program itself, my guess is that the DOT will select the "cream of the crop" of Mexican carriers – those they find to be the safest. Whether they are large or small, this bias will slant the data on violations, crashes and other compliance issues. But DOT will proclaim the program successful, and I would expect the agency to announce a full-blown opening of the border at the end of the one-year period. In fact, I understand that the agreement signed with Mexico specifies that the border will be open after the one-year pilot, even though Secretary Peters recently testified that the criteria to measure the pilot program's success had not been determined. The DOT Inspector General cited this issue as a major concern, and I find it very disturbing that a measurement and evaluation process is not in place.

It is also unclear as to what criteria will be used to disqualify a carrier from the program or to shut the program down? How will data be gathered on carriers and drivers participating in the program? This type of sham program does not serve the interests of highway safety and should be outright rejected from the start. Furthermore, to conform to Section 4007 of TEA-21 true pilot programs are required to be noticed in the Federal Register for review and comment by stakeholders and the public. What is DOT's justification for not following this process? It does not serve the public interest to have a program that affects

highway safety in such magnitude, to be formulated and carried out behind closed doors. It's certainly not coincidental that the announcement of this program was made late on a Friday afternoon, during a Congressional recess.

While DOT has laid out an impressive public relations campaign to assure the American public that Mexican trucks and drivers will meet all U.S. safety requirements, there will be no "meeting" of those requirements without adequate enforcement and oversight, and this is where I am convinced that neither the U.S. nor the Mexican governments have the resources to carry out an aggressive oversight and enforcement program. First on the Mexican side of the border, one has to wonder what the commitment to safety is were it not for NAFTA and the cross-border trucking provisions. The Mexican government has not initiated safety requirements we are talking about today on their own. They have been forced to negotiate them if they want their trucks coming into the United States. On the U.S. side, there has been a tremendous investment in resources at the taxpayer's expense to allow for the inspection of Mexican trucks at the border. But laying out requirements and regulations on paper that stipulate that Mexican drivers will be subject to the same drug and alcohol testing program as U.S. drivers, and that Mexican drivers must properly record their hours behind the wheel in logbooks doesn't necessarily make it so.

Let me tell this Subcommittee what the Teamsters Union has learned about the current state of the Mexican trucking industry. If you have not had the opportunity to read an investigative report, *Holding the Line*, that appeared in our August 2006 Teamster magazine I suggest that you do so. Mr. Chairman, I would request that this article be made part of the hearing record. This is a story by investigative reporter, Charles Bowden, who in 1999 wrote a similar story after spending several weeks with Mexican drivers. Back then he told of exploited, exhausted Mexican truck drivers, pushed to the limit by their employers. And guess what, seven years later, he found nothing had changed. He found the same conditions within the industry in 2006 that existed in 1999. Let me read you a few excerpts from truckers who were interviewed by Mr. Bowden:

> "The longest distance I drive," said a driver about 30 in a black T-shirt, "is from Ensenada to Cancun, 4500 kilometers. Five days and six nights alone. Tomatoes. The company won't pay for a second driver." Ah, but how can a man stay awake and drive for five straight days? The table erupts in laughter. The man facing the empty liter of beer smiles and says "Professional secret." The younger man in the black t-shirt offers one phrase, "Magic dust." There are more smiles and mention of "special chemicals." They are all family men who run the highways at least 25 days

> a month and they are adamant about two things – that nobody can run these long hauls without cocaine and crystal meth, and now and then some marijuana to level out the rush.
>
> "The man with the empty beer explains. "We make almost nothing – less than $300 a week. I work 48 hours non-stop. I drive 2,400 kilometers per trip and get no time for turnarounds."
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> And every man at the table agrees on their biggest problem – the government. And by that they mean the police, especially the federal police, who they say rob them at will. One said, "If you drive to Mexico City, you are robbed, for sure. Police are the first to rob you. If you report a robbery, the police try to make you the guilty person."

These drivers are victims – victims of a system that we, the U.S., will depend on to enforce drug and alcohol testing and hours-of-service regulations of drivers in this pilot program. What kind of confidence level does this give you?

I thought it important that the Subcommittee hear these stories because I want to talk further about hours-of-service enforcement and drug and alcohol testing. Again, without sufficient enforcement on the Mexican side of the border that establishes a strong no-tolerance policy, Mexican truck drivers will arrive at the U.S. border without the benefit of government and industry practices that deter this kind of behavior.

Let's peel back the layers a bit – first on hours-of-service. As I understand it, there has not been any real enforcement of any hours-of-service (HOS) regulations in Mexico, beyond the recent requirement of drivers having to carry log books, and those participating in the pilot program, having to produce a record-of-duty-status (RODS) at the border for the last eight days of work. Apparently there is a general prohibition against working more than eight hours a day, which I am told is ignored in most cases because it is not enforced. In fact, according to the Federal Motor Carrier Safety Administration, more than 15 percent of Mexican drivers in the commercial zone were placed out of service for not having a paper logbook to record their hours worked. To think then that all of a sudden, these Mexican drivers will change their habits overnight and adhere to U.S. HOS requirements when they cross the border is a leap of faith that does not give me great comfort for the safety of those motorists that will share the road with these potentially fatigued drivers. I have no confidence that the 8-day logbook that the Mexican driver produces at the border crossing will be indicative of his driving

record for those past eight days, primarily because there will be no rigorous enforcement of HOS on the Mexican side of the border. You can demand all the paper records you want, but without enforcement those records are suspect.

Even with enforcement, there seems to be a willingness on the part of Mexican carriers and drivers to ignore some of the basic requirements for operating in the commercial zone. I found it interesting that NAFTA SafeStat figures for 2005 show 9,205 specified traffic violations by Mexican carriers. Of that number, 8,684 are Size and Weight violations. Luckily, there are weigh-in-motion scales at the border inspection stations, but it is puzzling why there continue to be numerous citations in this area. Of the top ten Mexican driver Out-of-Service violations (OOS), 22.62 percent are for operating a Commercial Motor Vehicle (CMV) without a Commercial Drivers License (CDL) – a rather simple but necessary requirement to ensure safety.

The requirement of a drug and alcohol-testing program for Mexican drivers is of course necessary, but the need for carriers to simply provide proof that the drug and alcohol testing programs are in compliance with U.S. requirements is not enough. Aside from "paper" programs, I fail to see an effective way for the FMCSA to ensure compliance. In fact, the Inspector General testified last week of the need to ensure that drug and alcohol procedures, including the establishment of sufficient controls at the collection site, are adequate. To comply with U.S. standards, there needs to be scientifically valid random testing; a chain of custody; trained collectors and requirements for collection facilities; requirements for collection kits; and use of the same technology for testing, including two-part testing. When a U.S. driver tests positive, the driver has to attend and complete an education program and/or rehabilitation, and have a post treatment evaluation by a substance abuse professional. The driver must then have a return-to-duty test before returning to work. He can be subject to unannounced follow-up tests for one year to five years. Can we be assured that this is the type of program that the Mexican DOT will implement? Furthermore, the lack of a certified Mexican lab to which samples can be sent complicates the chain of custody issues.

What happens to a Mexican driver who may test positive in a post-accident testing scenario in the U.S? I know he is taken out of service, but if he's in Illinois, for example, how does he get back to Mexico? What happens to the load? What happens in a situation where a Mexican driver is in the U.S. for an extended period of time, but is selected for random drug testing? How will a driver be notified in the U.S.? Will the carrier simply wait until the driver returns to his/her domicile (wherever that may be)? What happens if the driver returns after the testing cycle

has expired? It may create an opportunity for these drivers to fall through the cracks and virtually never be tested. What happens if a carrier is found to be liable in a crash? Do U.S. legal remedies apply? These are questions that must be answered before any Mexican trucks are permitted to travel beyond the commercial zones.

Another area of concern is driver compliance with medical qualifications. In FMCSA's recent Notice of Proposed Rulemaking for combining the medical qualifications with the Commercial Drivers License (CDL) process, the FMCSA indicated that there is no agreement between the U.S. and Mexico concerning the medical qualifications for drivers, although such an agreement exists between the U.S. and Canada. While the U.S. and Mexico signed a Memorandum of Understanding that recognized the Licencia Federal de Conductor to be equivalent to the U.S. CDL, there is little known about the physical and medical criteria used to qualify truck drivers in Mexico. We need to know how their system of evaluating drivers stacks up to ours.

The DOT Inspector General, in his recent Congressional testimony to the Senate Subcommittee on Transportation Appropriations concerning the pilot program, indicated that FMCSA should correct inconsistencies or reporting problems in the border states. FMCSA reported that it had taken action to see that Texas eliminated a backlog of Mexican commercial driver license tickets that had not been entered into the database. FMCSA stated the other border states needed to take corrective action as well, and the FMCSA was encouraged to proactively monitor future reporting by the states. This leads to another issue that needs examination. Under the Motor Carrier Safety Improvement Act of 1999, U.S. drivers are subject to CDL disqualification for certain serious driving violations occurring in their personal vehicle. At the time the implementing regulations took effect, the International Brotherhood of Teamsters argued that in fairness, this same regulatory scheme should apply to Mexican drivers operating in the United States. The FMCSA dismissed our suggestion, but this situation creates a severe gap in equal treatment of drivers and could allow Mexican drivers, with what would be disqualifying offenses that sideline U.S. drivers, to operate in the U.S.

This issue of accuracy and population of the Mexican driver database is a great concern, and perhaps can be best illustrated in light of the decision that the Transportation Security Administration took with regard to the Mexican criminal data base in issuing regulations to administer the Free and Secure Trade (FAST) commercial driver card. The Subcommittee should know that when asked by Congressional staff how it would perform criminal background checks on Mexican

drivers who haul hazardous materials into the U.S., the TSA responded that it would check Mexican drivers against the U.S. criminal database. When asked why, the agency responded that the Mexican criminal database was incomplete and not easily accessible. How confident can we be in safety data of Mexican carriers and drivers, if the Mexican government's criminal database is suspect? I would venture to guess that hazardous materials transport was not included in this pilot program because of the questions it would raise with regard to the Mexican driver background check. How can checking a foreign driver against another country's criminal database provide a similar background check, as the law requires?

The Inspector General raised the issue of the accuracy of the driver database in his 2005 audit and again in his recent testimony before the Senate Subcommittee on Transportation Appropriations. He indicated that additional improvements needed to be made in the quality of the data used to monitor Mexican driver traffic convictions in the United States. This isn't only a safety issue. This is a fairness issue, especially as I stated earlier, U.S. drivers are now subject to CDL disqualification based on serious violations occurring in their personal vehicle.

While the transport of hazardous materials is not to be a part of this program, the Teamsters Union still has enforcement concerns in this area. It has been well documented that hazmat loads from Mexico crossing into the commercial zones have not been properly placarded (not reflective of the hazmat contained in the load) or placarded at all. In fact, the NAFTA Safety Stats on the FMCSA website indicate that the largest number of Hazardous Materials Inspections with OOS Violations for Mexican carriers at almost a 22 percent rate are for Prohibited Placarding, which can include the wrong identifying placard. It's fine to say that hazardous materials shipments will not be a part of the pilot, but what assurances do we have that trailers carrying hazmat will be stopped inside the commercial zones? I would suggest that any carrier participating in the pilot that is caught with a hazmat load be immediately dropped from the pilot program.

Other homeland security issues need to be examined as well. Will Mexican drivers be subject to threat assessments against the terrorist watch lists? The DOT's website has a list entitled *U.S. Safety and Security Requirements Await Trucks From Mexico*. It states, "all trucks and drivers entering the U.S. are screened by U.S. Customs and Border Protection Officers, which **could** include radiation portal monitoring and x-ray inspections of high risk cargo. We should know what **"could,"** mean in terms of the frequency rate of monitoring for radiation and x-ray inspections. Since 9/11, we have strengthened our borders to protect our country against terrorism threats. While I do not consider Mexican

drivers a terrorism threat, I am fearful that their trucks could be used to carry weapons of mass destruction or be used by terrorists as a means to sneak into this country and do us harm.

I am very concerned that local and state law enforcement will not have sufficient information or the resources to monitor and properly enforce this pilot program. The decal/registration number system that is proposed will apparently assign a different letter to those trucks permitted to operate in the commercial zones and those enrolled in the pilot program that can travel anywhere in the Unites States. The Inspector General has raised the issue of "capturing" the 1,000 Mexican trucks participating in this pilot program at the border among the five million trucks that travel into the commercial zones every year. It is a daunting task that must be performed if we are to keep our highways safe. We are apparently relying heavily on state and local law enforcement to keep watch over a vast expanse of territory and prevent those trucks authorized to operate only in the commercial zones from entering other parts of this country. Those responsible for that task must receive the proper training so that they know what process to follow when they have to put a Mexican truck or driver out-of-service.

Finally, there will be a strong temptation by unscrupulous employers to capitalize on lower wage Mexican drivers and entice them into carrying domestic cargo in the United States. We know that this occurs now, as Mexican trucks have been caught over the years operating illegally in more than 25 states. Who will enforce our cabotage laws to prevent point-to-point movement of cargo within the United States? What happens if this occurs and a Mexican carrier is caught? Will the truck and cargo be seized? What happens to the driver? And is this a basis for disqualification from the pilot program? Again, this job will fall to state and local law enforcement. They must receive the proper training to look for this type of violation of law and to know how to deal with it.

Mr. Chairman and Members of the Subcommittee, I have raised a number of issues in my testimony that need to be addressed before any Mexican truck participates in any program that allows them to travel beyond the commercial zones. I would ask that you not permit this program to move forward. There are too many safety and homeland security issues that must be resolved before we can be assured that Mexican trucks and their drivers meet all U.S. safety requirements and that all of our national security concerns are addressed as well. I thank you for the opportunity to testify here today on this important issue, and I look forward to answering any questions you may have.

THE NAFTA TRUCKER

Holding The Line

By Charles Bowden

Investigative Reporter Charles Bowden's Story in the November 1999 Issue of The Teamster Told of Exploited, Exhausted, Unsafe Mexican Truck Drivers— Seven Years Later, Nothing has Changed.

There is a plan no one talks about very much, one that floats over the horizon like an approaching storm at sea. In this business dream, the Pacific ports of the United States will be shifted south to new massive anchorages in Mexico even though this increases the shipping distance by 30 percent for all the Asian tonnage. These new ports will be linked by major train and truck arteries—NAFTA Corridors—to the cities of the United States and Canada. Mexican trucking companies will be bought (and are being bought up now) by American firms and Mexican truckers will deliver the freight and freely drive all U.S. highways. In this plan, the shipping of the United States leaves union ports and the long haul trucking leaves union drivers.

An enlarged I-35 will reach north from the sister cities of Laredo/Nuevo Laredo 1,600 miles to Canada via San Antonio, Austin, Dallas/Ft. Worth, Kansas City, the Twin Cities and Duluth and I-69 will originate at the same crossing and streak north to Michigan. Each corridor will be about 1,200 feet wide. Six lanes will be dedicated to cars; four to trucks and in the middle will be rail and utilities. The goods will come from new Mexican ports on the Pacific coast. At the moment, at least five such corridors are on the drawing boards.

This is the story of some of the drivers who will be used by this plan. They know nothing of this scheme. They are too busy simply surviving to study such matters.

[quote]
"I stand in front of the yard of Trans Mex Swift, an American owned Mexican trucking company. The traffic of the World Trade Bridge roars past. In less than an hour, four truck tires explode. Mexican truckers are not coddled with good rigs or good tires. One semi pulls over. Both tires on the left rear back axle are gone and the trucker stares at rims resting on the pavement. One tire, he explains, went about 150 miles ago, but he had no money with which to buy another one. Now both are gone."

PROFESSIONAL SECRETS
The five men sit at the truck stop table about 20 kilometers below the Rio Grande at Laredo-Nuevo Laredo on the Texas border. They, or their sons or grandsons, may someday be shock troops on the NAFTA Corridors. Just a few hundred yards from where the men eat and smoke, the major highway coming from the Mexican south forks. One road leads into Nuevo Laredo, the other arcs west and connects just west of the city with a trucking center on the U.S. side by means of the World Trade Bridge. This new bridge and dedicated truck highway is an early link in this NAFTA Corridor. At the moment, 5,800 trucks enter and leave this border crossing each

day, a trickle compared to the traffic that will pour north once the new ports, rails and roads come on line by 2025.
Their small lunch is finished, an empty liter of beer stands before one driver, and at the moment, they smoke and laugh and talk. For a Mexican trucker, life is an endless highway and the moments for conversation and fellowship can be few and far between.
They don't want their names used because they don't want trouble and life on the roads of Mexico is trouble enough.

"The longest distance I drive," said a driver about 30 in a black T-shirt, "is from Ensenada to Cancun, 4,500 kilometers. Five days and six nights alone. Tomatoes. The company won't pay for a second driver."

Ah, but how can a man stay awake and drive for five straight days?

The table erupts in laughter. The man facing the empty liter of beer smiles and says, "Professional secret."

The younger man in the black T-shirt offers one phrase, "Magic dust." There are more smiles and mention of "special chemicals."

And then they are off, a torrent of words and quips and smiles, and a knowing discussion of that jolt when a line of cocaine locks in. They are all family men who run the highways at least 25 days a month and they are adamant about two things—that nobody can run these long hauls without cocaine and crystal meth, and now and then some marijuana to level out the rush. And that the biggest danger on their endless runs comes from addicted Mexican truck drivers, which means all truck drivers.

DANGEROUS DRIVERS
The men earn about $1,100 a month. In Mexico, the cost of living is roughly 80 or 90 percent that of the U.S. The only real bargain in Mexico is labor. Many other items cost more than the U.S.—the telephone rates are among the highest in the world and a sack of cement or a board foot of lumber costs more than in any American town.

None of the drivers at the table has driven in the U.S. save for short crossings where they dump the load and instantly return on special routes like the World Trade Bridge.
The man with the empty beer explains, "We make almost nothing—less than $300 a week. I work 48 hours non-stop. I drive 2,400 kilometers per trip and get no time for turnarounds."

And every man at the table agrees on their biggest problem—the government. And by that they mean the police, especially federal, who rob them at will.

"If you drive to Mexico City," another driver adds, "you are robbed, for sure. Police are the first to rob you. If you report a robbery, the police try to make you the guilty person."

And now the table is rolling, about the bad equipment they are given, about the fact that the owners often stall them on payment, about how there is no escape from the job, that they all

know drivers who are still out there on long hauls at 70, how they have all been robbed and hijacked, have all killed people with their trucks and, given the nature of Mexican police, have all fled such accident sites, that they are all doomed to spend their lives on an asphalt treadmill. And so they take pride, enormous pride, in the fact that they can survive the life that has been dealt them.

"DUST IN THE AIR"
The basic Mexican trucker is living the life that American truckers once tasted before the Teamsters fashioned over-the road contracts. There are warm moments in this life. Women.

The men talk with smiles of cachimbas, which means fireplaces. In earlier days on the road, there would be wooden shacks with fires going, roadside brothels. Mexico now has four-lane roads for many truck routes and stouter buildings, but the term cachimba has stuck for truck stops where women and drugs are freely available.

One man says, "Don't print that. If you do, all those American truckers will want to drive down here."

A woman costs about $20 and drugs are like dust in the air. A Mexican trucker can get anything at a cachimba but decent food. They all agree that the most beautiful women are on the West Coast route that snakes through the nareo state of Sinaloa.

For a moment, the men are all smiles and then this moment passes.

"The worst thing,"one says with some bitterness, "is not being home. We all have two or three Sanchos," meaning strangers who sleep with their wives when they are gone.

NO SLEEP AT ALL
Francisco Samuel Angiana is around 40 years old and he is out of sorts as he lingers at a truck stop in Santa Ana, Sonora, about 60 miles south of the Nogales, Arizona crossing. This is yet another NAFTA corridor, a sketch on some future map that will eventually be the route for torrents of Mexican truckers moving freight from the planned Mexican ports.

He was robbed the night before at a truck stop in Caborca, a narco town on the Mexican federal highway that links Baja, California with the Mexican mainland. He points to the hole in his dashboard where his CB radio and regular radio once rested. He is on his basic run from Tijuana to Mexico City. Normally, he is allowed 72 hours for this route, but sometimes he does the express run of 48 hours and then he gets no sleep at all.
"I have 20 years experience," he adds, "Here you make the rules and take a lot of amphetamines."

But he tries to live cleanly and so he personally uses massive vitamin doses and various power drinks of caffeine and herbs to keep him rolling. A crucified Christ hangs in one corner of his cab and when he drives he stares at portraits of his wife and three children to keep him moving. On the seat beside him is a laptop computer—he is constantly monitored by GPS and he is never told what his cargo is for security reasons. He drives at least a 130,000 miles a year, is almost

never home and earns maybe $1,100 a month. And he is very intelligent and once planned to be a lawyer before the reality of the Mexican economy put him behind the wheel of a semi.

PAWNS IN A GAME

He has been robbed before and tries to be ready for such moments. He hauls out a small baseball bat, and his knife. He demonstrates how he can do a karate kick to the head while seated behind his steering wheel. He is a small man in jeans, blue shirt and cowboy boots and he repeatedly shows me this practiced kick to within an inch of my head.

Then he brings out his infrared binoculars. At night they prove useful, he explains. He can see lights ahead, stare out through them, and if he sees a federal police roadblock, then he pulls over and tries to find a way around the cops lest they also rob him. He also carries two sets of identification because you never really know whom you are dealing with out there on the road. He's been hijacked twice. He points to the photographs of his family and says, "They give me the energy to keep going. If you are alone, no one helps you. It is you and your truck."

He adds softly, "The hardest part of my job is staying alive."

He has never heard of the Teamsters Union. But he has a brother in the United States who drives a truck for Wells Fargo.

"He is constantly telling me to come to the U.S.," Francisco says, "That you only have to work certain hours there."

But he stays in Mexico.

Francisco is a proud man all but killing himself on Mexican roads. Now he faces a 1,000-mile leg to Mexico City without the security of his CB. He will drive a gauntlet of Mexican cops and bandits. He'll make his haul, have a few brief moments with his family, and then return to the road.

He keeps a gallon of water and a liter of apple juice on the floor where he can reach them. He will never stop rolling until he dies. It is very hard to see him and the other truckers as the enemy. They are pawns in a game that has never been explained to them.

As the truckers in Nuevo Laredo explain their lives to me, lives typical of Mexican truckers like Francisco, a demonstration of 3,000 drivers takes place at the World Trade Bridge. The truckers protest the 90-minute wait they face to cross the bridge, a delay that cuts into their earnings since they are not paid by the hour. No one at the table mentions this since no one at the table believes anything will ever get better.

LA SANTISIMA

I stand in front of the yard of Trans Mex Swift, an American-owned Mexican trucking company. The traffic of the World Trade Bridge roars past. In less than an hour, four truck tires explode. Mexican truckers are not coddled with good rigs or good tires. One semi pulls over. Both tires on the left rear back axle are gone and the trucker stares at rims resting on the pavement. One tire,

he explains, went about 150 miles ago, but he had no money with which to buy another one. Now both are gone.

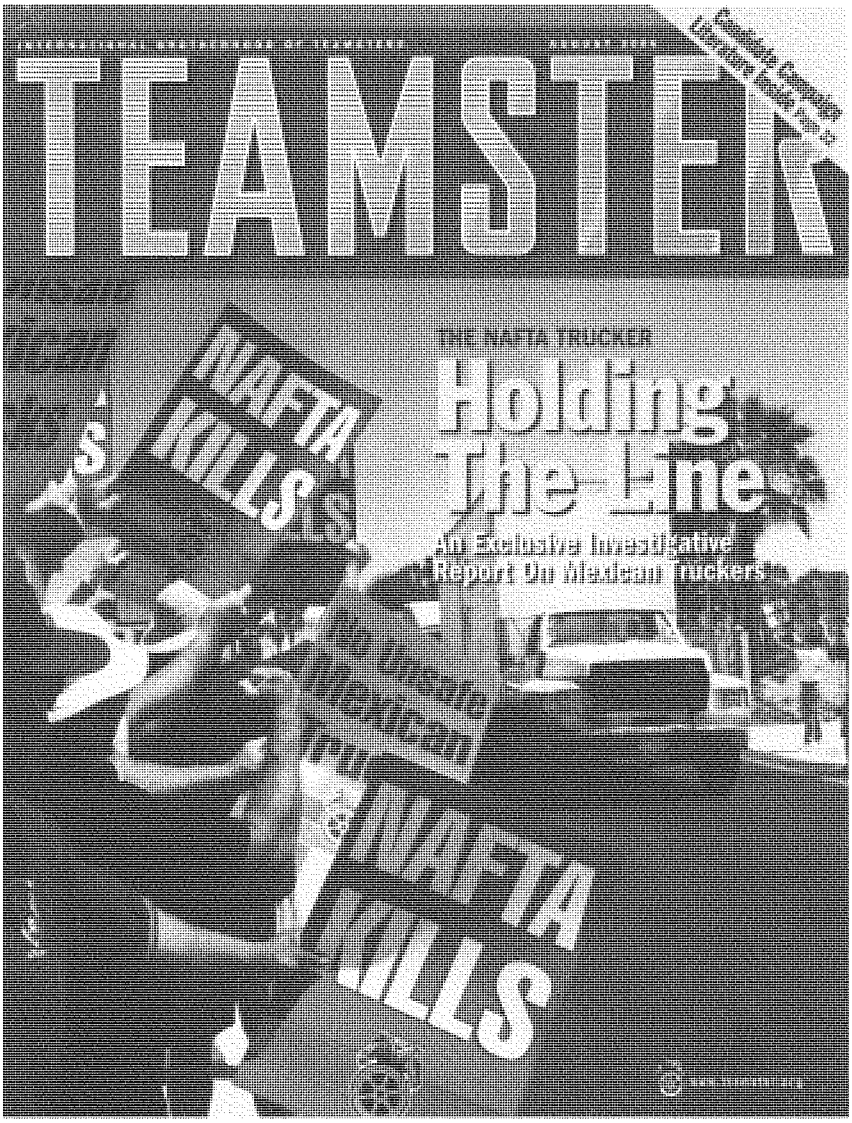
Politicians, unions and lobbyists will sort out what to do about Mexican truckers coming north. But here on the actual ground, the truckers have sought their own relief. All over the country, a strange figure has appeared in the last five years or so, La Santisima Muerte, Most Holy Death. She is skeletal, wears a long robe, carries a scythe and holds the whole world in her hand. She is recognized by no church or government. But she is known to all who move down these roads.

At the cloverleaf where the truck traffic spins off the I-35 corridor to the World Trade Bridge, a small tin structure the size of a doll house appeared five years ago. Now three large chapels have come out of the ground and in front of them are two statues of the La Santisima seven or eight feet tall. Semis constantly pull over, engines idling, and the truckers walk to the statues and pray. They leave candy bars, fruits, small coins and burning cigarettes. They ask La Santisima to spare their lives, to protect them on the dangerous roads, to bring them home to their women and children. They speak softly with that careful voice of reverence normally heard only in churches.

If the free-trade bureaucrats have their way, Mexican truckers will come north and they will be overworked and underpaid and pushed almost beyond human endurance.

Right now, La Santisima is the only one watching out for them.

That will have to change or nothing will change at all.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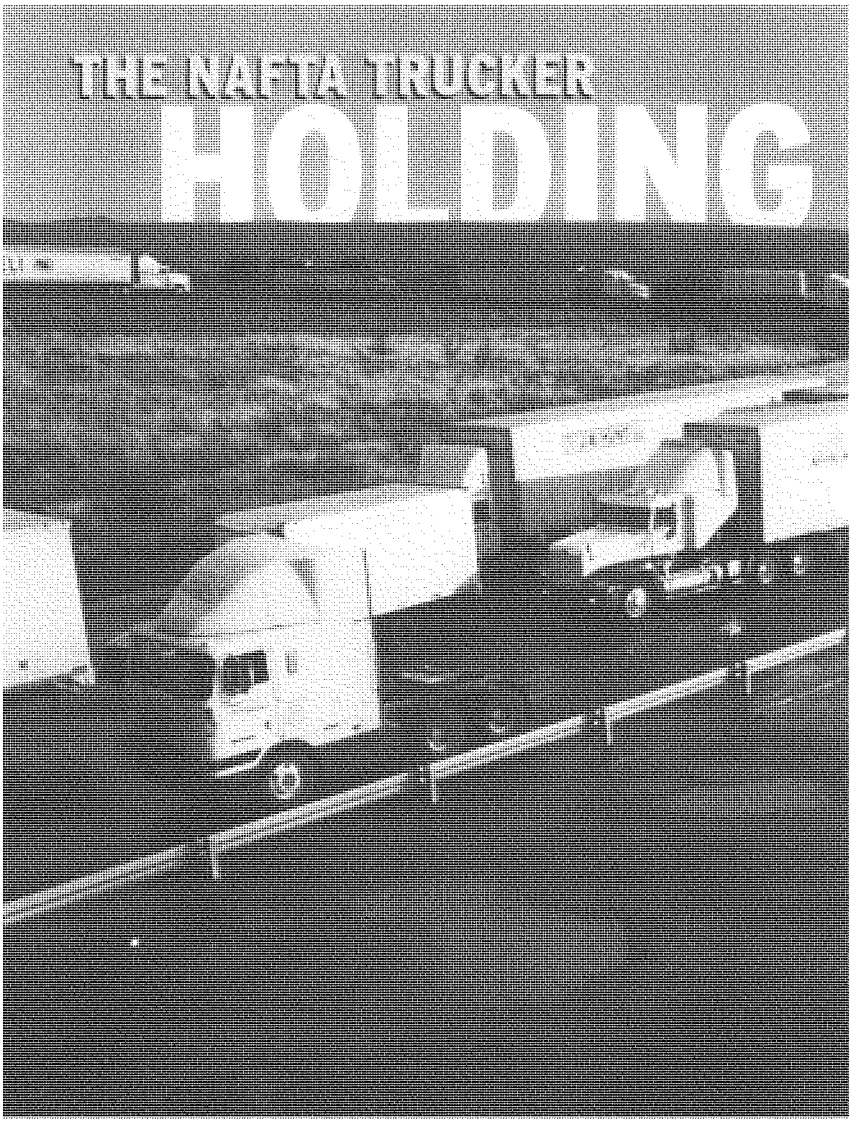
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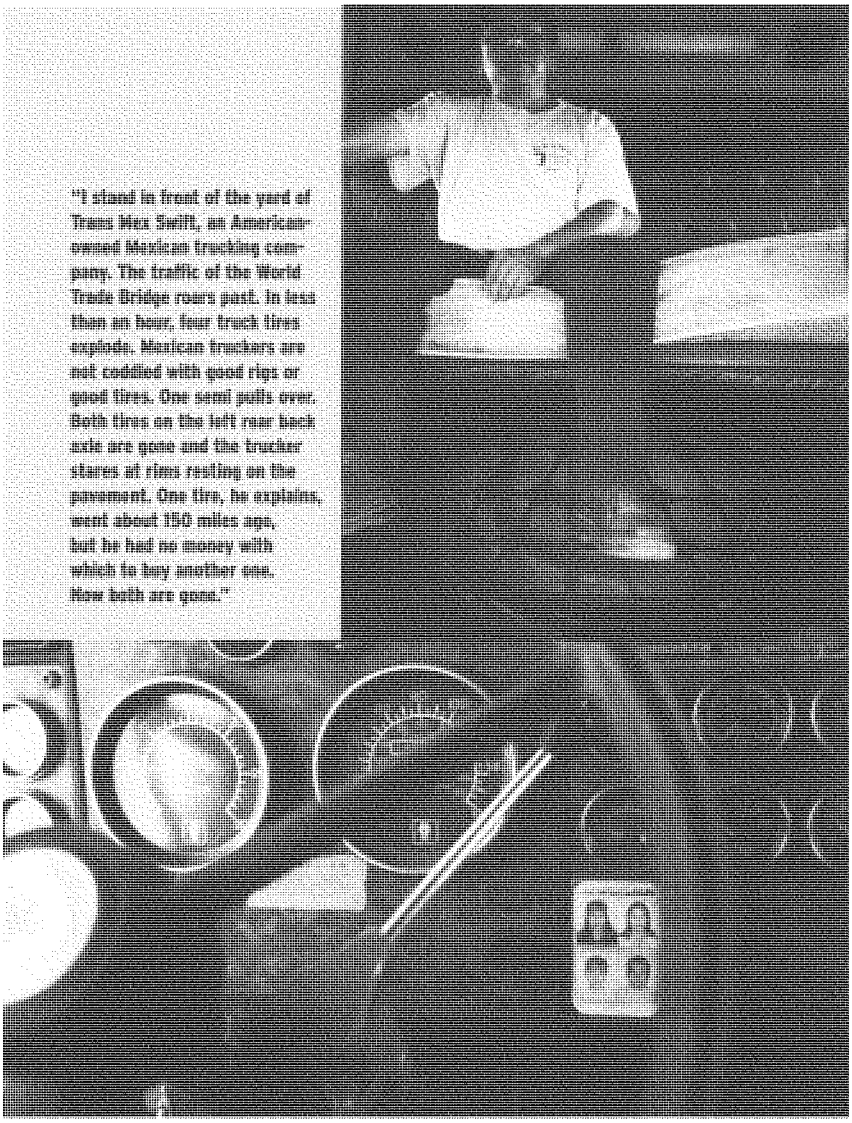
BY CHARLES BOWDEN // PHOTOS BY JULIAN CARDONA



"I stand in front of the yard of Trans Wex Swift, an American-owned Mexican trucking company. The traffic of the World Trade Bridge roars past. In less than an hour, four truck tires explode. Mexican truckers are not coddled with good rigs or good tires. One semi pulls over. Both tires on the left rear back axle are gone and the trucker stares at rims resting on the pavement. One tire, he explains, went about 150 miles ago, but he had no money with which to buy another one. Now both are gone."

Professional Secrets

The five men sit at the truckstop table about 20 kilometers below the Rio Grande at Laredo-Nuevo Laredo on the Texas border. They, or their sons or grandsons, may someday be shock troops on the NAFTA Corridors. Just a few hundred yards from where the men eat and smoke, the major highway coming from the Mexican south forks. One road leads into Nuevo Laredo, the other arcs west and connects just west of the city with a trucking center on the U.S. side by means of the World Trade Bridge. This new bridge and dedicated truck highway is an early link in this NAFTA Corridor. At the moment, 5,800 trucks enter and leave this border crossing each day, a trickle compared to the traffic that will pour north once the new ports, rails and roads come on line by 2025.

Their small lunch is finished, an empty liter of beer stands before one driver, and at the moment, they smoke and laugh and talk. For a Mexican trucker, life is an endless highway and the moments for conversation and fellowship can be few and far between.

They don't want their names used because they don't want trouble and life on the roads of Mexico is trouble enough.

"The longest distance I drive," said a driver about 30 in a black T-shirt, "is from Ensenada to Cancun, 4,500 kilometers. Five days and six nights alone. Tomatoes. The company won't pay for a second driver."

Ah, but how can a man stay awake and drive for five straight days?

The table erupts in laughter. The man facing the empty liter of beer smiles and says, "Professional secret."

The younger man in the black T-shirt offers one phrase, "Magic dust."

There are more smiles and mention of "special chemicals."

And then they are off, a torrent of words and quips and smiles, and a knowing discussion of that jolt when a line of cocaine locks in. They are all family men who run the highways at least 25 days a month and they are adamant about two things—that nobody can run these long hauls without cocaine and crystal meth, and now and then some marijuana to level out the rush. And that the biggest danger on their endless runs comes from addicted Mexican truck drivers, which means all truck drivers.

Dangerous Drivers

The men earn about $1,100 a month. In Mexico, the cost of living is roughly 80 or 90 percent that of the U.S. The only real bargain in Mexico is labor. Many other items cost more than the U.S.—the telephone rates are among the highest in the world and a sack of cement or a board foot of lumber costs more than in any American town.

None of the drivers at the table has driven in the U.S. save for short crossings where they dump the load and instantly return on special routes like the World Trade Bridge.

The man with the empty beer explains "We make almost nothing—less than $300 a week. I work 48 hours non-stop. I drive 2,400 kilometers per trip and get no time for turnarounds."

And every man at the table agrees on their biggest problem—the government. And by that they mean the police, especially federal, who rob them at will.

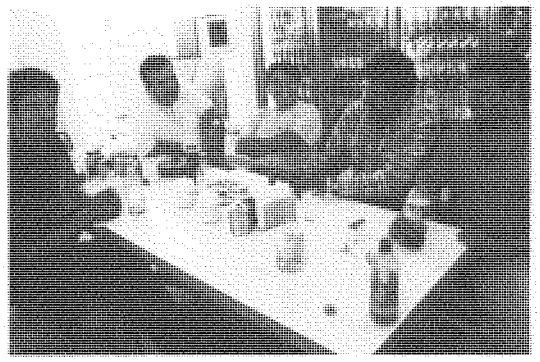
"If you drive to Mexico City," another driver adds, "you are robbed, for sure. Police are the first to rob you. If you report a robbery, the police try to make you the guilty person."

And now the table is rolling, about the bad equipment they are given, about the fact that the owners often stall them on payment, about how there is no escape from the job, that they all know drivers who are still out there on long hauls at 70, how they have all been robbed and hijacked, have all killed people with their trucks and, given the nature of Mexican police, have all fled such accident sites, that they are all doomed to spend their lives on an asphalt treadmill. And so they take pride, enormous pride, in the fact that they can survive the life that has been dealt them.

"Dust in the Air"

The basic Mexican trucker is living the life that American truckers once tasted before the Teamsters fashioned over-the-road contracts.

There are warm moments in this life. Women.



The men talk with smiles of cachimbas, which means fireplaces. In earlier days on the road, there would be wooden shacks with fires going, roadside brothels. Mexico now has four-lane roads for many truck routes and stouter buildings, but the term cachimba has stuck for truckstops where women and drugs are freely available.

One man says, "Don't print that. If you do, all those American truckers will want to drive down here."

A woman costs about $20 and drugs are like dust in the air. A Mexican trucker can get anything at a cachimba but decent food. They all agree that the most beautiful women are on the West Coast route that snakes through the narco state of Sinaloa.

For a moment, the men are all smiles and then this moment passes.

"The worst thing,"one says with some bitterness, "is not being home. We all have two or three Sanchos," meaning strangers who sleep with their wives when they are gone.

No Sleep at All

Francisco Samuel Angiana is around 40 years old and he is out of sorts as he lingers at a truck stop in Santa Ana, Sonora, about 60 miles south of the Nogales, Arizona crossing. This is yet another NAFTA corridor, a sketch on some future map that will eventually be the route for torrents of Mexican truckers moving freight from the planned Mexican ports.

He was robbed the night before at a truckstop in Caborca, a narco town on the Mexican federal highway that links Baja, California with the Mexican mainland. He points to the hole in his dashboard where his CB radio and regular radio once rested. He is on his basic run from Tijuana to Mexico City. Normally, he is allowed 72 hours for this route, but sometimes he does the express run of 48 hours and then he gets no sleep at all.

"I have 20 years experience," he adds, "Here you make the rules and take a lot of amphetamines."

All over the country, a strange figure has appeared in the last five years or so, La Santisima Muerte, Most Holy Death. She is skeletal, wears a long robe, carries a scythe and holds the whole world in her hand. She is recognized by no church or government. But she is known to all who move down these roads... Semis constantly pull over, engines idling, and the truckers walk to the statues and pray. They leave candy bars, fruits, small coins and burning cigarettes. They ask La Santisima to spare their lives, to protect them on the dangerous roads, to bring them home to their women and children.

But he tries to live cleanly and so he personally uses massive vitamin doses and various power drinks of caffeine and herbs to keep him rolling. A crucified Christ hangs in one corner of his cab and when he drives he stares at portraits of his wife and three children to keep him moving. On the seat beside him is a laptop computer—he is constantly monitored by GPS and he is never told what his cargo is for security reasons. He drives at least a 130,000 miles a year, is almost never home and earns maybe $1,100 a month. And he is very intelligent and once planned to be a lawyer before the reality of the Mexican economy put him behind the wheel of a semi.

Pawns in a Game

He has been robbed before and tries to be ready for such moments. He hauls out a small baseball bat, and his knife. He demonstrates how he can do a karate kick to the head while seated behind his steering wheel. He is a small man in jeans, blue shirt and cowboy boots and he repeatedly shows me this practiced kick to within an inch of my head.

Then he brings out his infrared binoculars. At night they prove useful, he explains. He can see lights ahead, stare out through them, and if he sees a feder police roadblock, then he pulls over anc tries to find a way around the cops lest they also rob him. He also carries two s of identification because you never real know who you are dealing with out the on the road. He's been hijacked twice. H points to the photographs of his family and says, "They give me the energy to k going. If you are alone, no one helps yo It is you and your truck."

He adds softly, "The hardest part of job is staying alive."

He has never heard of the Teamsters Union. But he has a brother in the Unit States who drives a truck for Wells Farg

"He is constantly telling me to come the U.S.," Francisco says, "That you onl have to work certain hours there."

But he stays in Mexico.

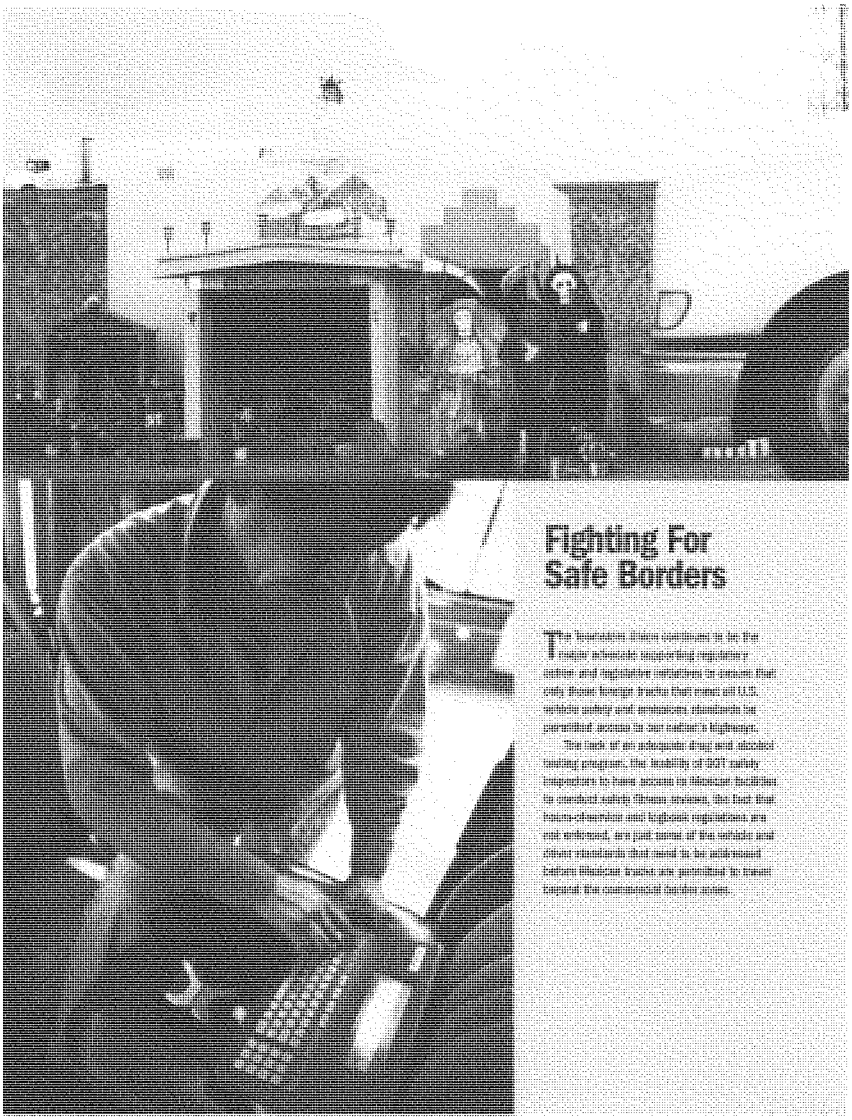
Francisco is a proud man all but killi himself on Mexican roads. Now he face 1,000-mile leg to Mexico City without t security of his CB. He will drive a gaunt of Mexican cops and bandits. He'll mak his haul, have a few brief moments with his family, and then return to the road.

He keeps a gallon of water and a liter of apple juice on the floor where he can reach them. He will never stop rolling until he dies. It is very hard to see him and the other truckers as the enemy. Th are pawns in a game that has never been explained to them.

As the truckers in Nuevo Laredo expla their lives to me, lives typical of Mexican truckers like Francisco, a demonstration c 3,000 drivers takes place at the World Trac Bridge. The truckers protest the 90-minut wait they face to cross the bridge, a delay t cuts into their earnings since they are not paid by the hour. No one at the table men tions this since no one at the table believes anything will ever get better.

La Santisima

I stand in front of the yard of Trans Me Swift, an American-owned Mexican tru



Fighting For Safe Borders

The barriers that continue to be in the way of a smooth functioning NAFTA are tariffs and regulatory obstacles to ensure that only those foreign trucks that meet all U.S. vehicle safety and emissions standards be permitted access to our nation's highways.

The lack of an adequate drug and alcohol testing program, the inability of DOT safety inspectors to have access to Mexican facilities to conduct safety fitness reviews, the fact that hours-of-service and logbook regulations are not enforced, are just some of the vehicle and driver standards that need to be addressed before Mexican trucks are permitted to travel beyond the commercial border zone.

False Promises, Lost Jobs

The Legacy of the North American Free Trade Agreement

When Congress was debating the North American Free Trade Agreement (NAFTA) in 1993, supporters of the trade pact returned to Capitol Hill promising job growth and an economic boost for U.S. workers. However, more than a decade of evidence has proven what the opponents said: either unknowingly and at the time—that NAFTA would prove a disaster for working families everywhere.

While the pro-NAFTA crowd promised that the trade deal would create 170,000 jobs annually, the U.S. lost net 1 million jobs in manufacturing alone since its passage—one in six jobs in that sector. According to the government's own program to train workers who lost their jobs as a direct result of NAFTA, more than a half million workers have been laid off or made significantly less by that trade deal.

Trade Deficit

Flowery predictions about increased trade surpluses for the United States have also rolled out wrong. NAFTA supporters claimed that the deal would create a $13 billion trade surplus with Mexico within ten years. However, the U.S. actually built a $15 billion trade deficit with Mexico in that time period—a figure that has more than doubled in recent years.

"If there is a positive side to the disastrous legacy of NAFTA, it is that it has made it a little harder for the free trade cabal to keep their job-killing agenda job-killing secret," said Jim Hightower, Democratic National President. "While the House and Senate still have a majority who continue to support the free trade agenda, their ranks have shrunk over the years—sometimes due to members of Congress changing their minds and sometimes due to voters changing their minds about members of Congress."

ing company. The traffic of the World Trade Bridge roars past. In less than an hour, four truck tires explode. Mexican truckers are not coddled with good rigs or good tires. One semi pulls over. Both tires on the left rear back axle are gone and the trucker stares at rims resting on the pavement. One tire, he explains, went about 150 miles ago, but he had no money with which to buy another one. Now both are gone.

Politicians, unions and lobbyists will sort out what to do about Mexican truckers coming north. But here on the actual ground, the truckers have sought their own relief. All over the country, a strange figure has appeared in the last five years or so, La Santisima Muerte, Most Holy Death. She is skeletal, wears a long robe, carries a scythe and holds the whole world in her hand. She is recognized by no church or government. But she is known to all who move down these roads.

At the cloverleaf where the truck traffic spins off the I-35 corridor to the World Trade Bridge, a small tin structure the size of a doll house appeared five years ago. Now three large chapels have come out of the ground and in front of them are two statues of the La Santisima seven or eight feet tall. Semis constantly pull over, engines idling, and the truckers walk to the statues and pray. They leave candy bars, fruits, small coins and burning cigarettes. They ask La Santisima to spare their lives, to protect them on the dangerous roads, to bring them home to their women and children. They speak softly with that careful voice of reverence normally heard only in churches.

If the free-trade bureaucrats have their way, Mexican truckers will come north and they will be overworked and underpaid and pushed almost beyond human endurance.

Right now, La Santisima is the only one watching out for them.

That will have to change or nothing will change at all.

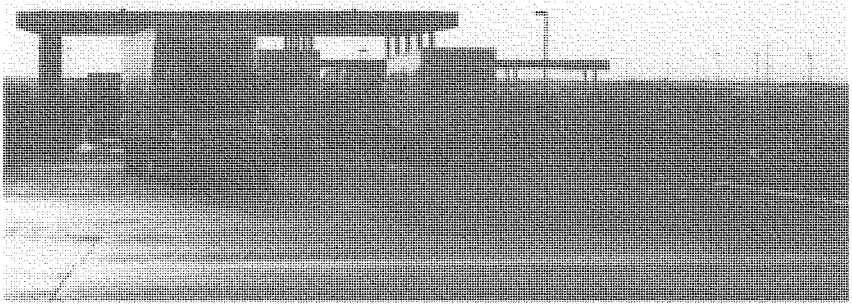
The Murray-Shelby Amendment

Bipartisan Measure has Protected U.S. Highways

Five years ago, the International Brotherhood of Teamsters lobbied for and passed legislation in Congress to protect U.S. drivers and the traveling public from unsafe Mexican trucks. The measure, known as the Murray-Shelby Amendment, was introduced by the bipartisan team of Sen. Patty Murray (D-WA) and Sen. Richard Shelby (R-AL). After much debate, the Senate voted that summer to include the language in the annual appropriations bill for the Department of Transportation.

"The provisions on Mexican trucks contained in this bill is a common-sense compromise between the laissez-faire approach of the administration to let Mexican trucks in and check them later, and the strict-protectionist approach of the House to keep Mexican trucks out and not check them at all," Sen. Murray said after the vote. "This bill is neither protectionist nor discriminatory, as some Senators have desperately claimed."

Earlier in 2001, the Bush administration had called for the opening of the U.S.-Mexican border under the rules of the North American Free Trade Agreement (NAFTA). However, the Murray-Shelby Amendment established a series of requirements that the Department of Transportation (DOT) must meet in order to ensure thorough inspection and regulation of Mexican trucking companies. Until DOT is able to prove that it has complied no funds can be spent to certify Mexican carriers to operate in the United States.



Congress of the United States
Washington, DC 20515

Statement of the Honorable Eddie Bernice Johnson
House Subcommittee on Highways & Transit: Hearing on U.S. Mexican Trucking: Safety & Cross Border Demonstration Project
Tuesday, March 13, 2007 – 2167 Rayburn

Thank you Mr. Chairman.

At the onset I want to thank you for accommodating my request to participate in today's subcommittee hearing.

I am in between hearings so I will be brief.

The subject matter before the subcommittee today is of utmost importance to my state and congressional district.

Over the past weeks, I have read with interest the flashy press releases from the Administration touting the many benefits of the cross-border demonstration project. However, I have not yet received sufficient assurances that this project won't have an adverse impact on highway safety in my state.

Goods movement is the lifeblood of the Texas economy, and particularly the DFW region where I-35, I-30, I-20, and I-45 all converge in the heart of my congressional district.

Over the past five years, the number of intrastate carriers increased forty-three percent, with a similar increase in interstate carriers.

Indeed, commerce is booming in Texas, but it has come at a price, as inspection and law enforcement agencies are constantly overwhelmed.

Mr. Chairman, much to my dismay, the State of Texas consistently leads the nation in fatal crashes involving large trucks.

In 2005, five hundred and two people died in big-truck accidents and ten thousand were injured.

As evidenced by these statistics, my state is facing its own set of highway safety challenges in the absence of expanded Mexican trucking operations.

And based on what I am hearing from my locals on the ground, the state lacks the necessary commitment of infrastructure, coordination, and man-power from the federal government to support this expansive program.

As I close, I want to state for the record that I am not opposed to increased commerce flowing through my state or district.

I am not anti-trade; however, I am pro-safety and I have serious concerns about what this program means for the safety of the traveling public in my state and district.

I want to thank our witnesses that have come before us to testify this afternoon and I look forward to their testimony.

Thank you Mr. Chairman, I yield back the balance of my time.

THE HONORABLE DANIEL W. LIPINSKI

House Subcommittee on Highways and Transit
Hearing on U.S.-Mexican Trucking: Safety and the Cross-Border Demonstration Project
Tuesday, March 13, 2007 at 1:00 PM

Chairman DeFazio and Ranking Member Duncan, thank you for holding this hearing today and for your continued leadership on issues related to our nation's highways.

I would also like to thank our two panels for joining us today.

This is a very significant hearing on a set of very significant issues.

Let me first begin by stressing how important highway safety is to me and my District. Chicagoland is in many ways the intersection of the United States' transportation systems. An enormous amount of people and goods pass through the Chicagoland area everyday – whether it's through the two world-class airports or the enormous amount of rail and highway traffic. Quite simply, Chicagoland is the transportation hub of the nation.

My constituents live and work among these intersecting transportation lines. And so when we're talking about issues that deal with transportation safety, we're talking about something that directly affects the lives of all of my constituents.

Today, as we discuss the Administration's cross border trucking pilot program, I would hope that all of the security concerns related to this program are thoroughly addressed. I would hope that all of the safety concerns are thoroughly addressed. For example, Mexican trucks are in many cases built to weaker safety requirements than American trucks and are on average larger than American trucks. Furthermore, drivers of Mexican trucks are not held to the same safety standards as American truck drivers and consequently may be more likely to cause violent accidents on American highways.

I am interested to hear how the Department of Transportation plans to address these and other safety issues that are raised by allowing Mexican truck drivers on our roads. We must ensure that we are not jeopardizing the lives of American motorists in the name of free trade.

For now, there are far too many unanswered questions. Until such time those questions are answered, and until such time we can ensure safety concerns can be addressed, I do not believe we should move forward with this demonstration project.

From my standpoint, safety MUST come first.

I look forward to listening to the testimony of our witnesses here today.

OPENING STATEMENT OF
Rep. John Mica
Ranking Member, Committee on Transportation and Infrastructure

U.S./MEXICAN TRUCKING: SAFETY AND THE CROSS BORDER DEMONSTRATION PROJECT

Tuesday March 13, 2007

Thank you, Mr. Chairman.

I am pleased the Committee is holding today's hearing on DOT's newly announced pilot program to open the U.S./Mexican border for U.S.-based trucks driving into Mexico and for Mexico-based trucks driving into the U.S.

Over 14 years ago, Congress agreed to the North American Free Trade Agreement. At that time, I voted against NAFTA. I believed certain portions of the agreement did not put U.S. and Mexico on a level playing field in terms of equal wages, judicial systems, and most importantly, regulatory standards. Because of these inequities, I felt U.S. businesses were at an unfair disadvantage to Mexican businesses.

Today, we're going to hear about DOT's Cross Border Demonstration Project. This is a one-year pilot program to see how a select group of Mexican trucks will operate in the U.S. Also, U.S. trucks will begin operations on Mexican highways, which is a new opportunity for U.S. truckers.

This pilot is the result of years of litigation, Congressional mandates, and cross border negotiations. DOT asserts that all the preliminary steps have been accomplished to ensure Mexican trucks will comply with U.S. regulations. The trucks must follow our Hours of Service, alcohol and drug testing, and vehicle maintenance regulations.

As I said before, one of my biggest concerns with NAFTA was the lack of adequate regulation on the Mexican side. This pilot program will force Mexican companies to comply with the same regulations U.S. companies must work under.

I believe this pilot program is necessary - not only because the U.S. must comply with international law - but also to determine if NAFTA can work when the playing field is truly leveled.

I look forward to hearing from the DOT Inspector General and the Federal Motor Carrier Safety Administrator about whether they think US DOT and the Federal and State enforcement agencies are ready to handle Mexican trucks.

I also look forward to hearing from someone who actually has hands-on experience with Mexican trucks. Major Mark Rogers is with Texas Department of Public Safety. Texas DPS performs all the truck inspections at the Texas-Mexico border.

Major Rogers has been with DPS since NAFTA was signed. He knows the quality of Mexican trucks crossing into the commercial zone and can talk about their safety records. He can tell our Committee what to expect when the pilot program begins. He is the only person on this panel that has hands-on inspection experience with Mexican trucks.

Of course, there remain critics of Mexican trucks. These critics argue Mexican trucks are going to take jobs away from U.S. truck drivers because Mexican truckers earn less than U.S. drivers. They claim Mexican trucks are unsafe, old, and produce more pollution than their American counterparts. Some of these critics are here today and I share in some of their concerns.

However, we need to be careful to not make broad characterizations that can be considered discriminatory. It would be wrong to assume that all Mexican trucks that will operate in the U.S. will be old and unsafe.

In fact, it is likely that the Mexican carriers that will participate in this program will operate newer equipment with experienced drivers due to the economic factors associated with the routes that will be run under the demonstration program. It is also important to note that there is currently a shortage of approximately 20,000 truck drivers in the U.S.

There is one aspect of this pilot program that has received little or no attention and I think it is important to bring it to peoples' attention. This pilot program will also open the border to trucks delivering U.S. goods into Mexico. We cannot ignore this expansion for U.S. businesses and must be ready to take advantage of this opportunity.

It is also important to say that this Committee will continue to closely scrutinize this Cross Border Demonstration Project over the next year. If this demonstration project does show that Mexican carriers are posing a safety problem or an adverse impact on the environment we will revisit this issue.

Mexico is our 2nd largest trading partner, and only 2nd to our other NAFTA partner, Canada. If we want to continue to be competitive in the global economy we need to make sure that our exchange of goods with both Mexico and Canada is done in the most efficient manner possible.

I believe this hearing will provide answers to many of the questions the Cross Border Demonstration Project poses to this Committee. It is important for us to understand what will happen when the border opens and what the future of trucking will be.

Thank you again, Mr. Chairman, for holding this important hearing.

1

Statement of Rep. Harry Mitchell
House Transportation and Infrastructure Committee
Subcommittee on Highways and Transit
3/13/07

--Thank you Mr. Chairman.

--As you know, this is an issue of great importance to Arizona.

-- Every year, more than 6.5 million commercial vehicles pass through Arizona's international ports of entry.

--A significant portion of these are commercial trucks from Mexico.

2

--Currently, Mexican-domiciled commercial trucks are granted only limited access to America's roads. They are confined to special "border zones" ranging from three to twenty miles wide.

--Today, the Department of Transportation is considering a pilot program to allow Mexican commercial trucks to travel beyond these border zones.

3

--While loosening our current restrictions would unquestionably have a significant economic impact, for me, the issue is about safety.

-- We need to ensure that Mexican trucks meet American safety standards, and do not put our driving public at risk.

--At this time, however, I am not sure we have such assurance.

4

-- According to a 2005 audit by the Department of Transportation Office of Inspector General, Mexico continues to have problems developing an adequate system to test commercial drivers for drug and alcohol use.

--The same audit found Mexico-domiciled motor carriers had submitted inaccurate or incomplete data on both vehicles and drivers.

5

-- Even more alarming, are reports of Mexican truckers driving 16-20 hours in a single day, using methamphetamine, cocaine and other stimulants to maintain awareness.

--If true, clearly these truckers pose a serious risk to drivers in Arizona, and anywhere else they are allowed to operate.

6

--Safety needs to be our number one priority, and I am grateful to this committee for providing us this opportunity to address it. I look forward to hearing from today's witnesses.

--I yield back the balance of my time.

Statement of Major Mark Rogers
Texas Department of Public Safety
Texas Highway Patrol Division - HQ
Commercial Vehicle Enforcement Operations

Mr. Chairman & Members:

Thank you for your invitation to address the Committee on this most important topic.

First, I am required by Texas state statute to advise the committee that I cannot testify either for or against a legislative proposal or program. I can only testify as a resource witness and in that capacity I am pleased to provide you with an overview of our Texas Border Safety Inspection Program.

Our Texas Border Safety Inspection Program is operated to provide an effective and efficient commercial vehicle enforcement program that:

- Ensures public safety and security;
- Prevents the premature and unnecessary deterioration of our state highway infrastructure due to overweight vehicles; and
- Creates an environment that promotes vital and safe commerce in Texas.

Our commercial vehicle enforcement program ensures that only competent drivers are operating safe vehicles in compliance with our state statutes. Our program also encourages the trucking industry to take a greater participatory role in resolving transportation issues.

It is important to note that while our goal at the Texas - Mexico is to inspect the highest number of trucks as possible, we also strive to not impede legal, compliant vehicles crossing the border.

The following reasons are what would cause a commercial motor vehicle to be detained at our Border Safety Inspection Facilities:

- Visually detected safety defects
- Failure of the weigh-motion screening
- Not displaying a valid CVSA decal; or
- Any other obvious violation of state statute.

Our border inspection personnel visually screen 100% of the vehicles entering our facilities; screen the weight via weigh-in-motion scales of 100% of the vehicles; and then generally conduct a more thorough inspection of between 3 to 5% of the vehicles crossing the border.

In 2006, U. S. Customs and Border Protection statistics indicated that 3,247,525 commercial motor vehicles crossed the Texas - Mexico border. During this same time period, the Texas Department of Public Safety (DPS) performed a Level I, II, or III inspection on a total of 101,295 commercial vehicles at the border. DPS inspections resulted in 23,651 vehicles (23.35%) being placed out-of-service and a total of 649 (0.64%) drivers being placed out-of-service. During the first quarter of Federal Fiscal Year 2007, the DPS has inspected 25,481 commercial vehicles crossing the border. These inspections have resulted in 5,862 vehicles (23%) and 144 drivers (0.57%) being placed out-of-service respectively. Please note that these out-of-service rates are comparable to the national out-of-service rates for commercial vehicles and represent a decrease from the near 100% Mexican commercial vehicle out-of-service rates that were encountered when our program first began in 1995. This out-of-service decrease is attributed to an aggressive, dedicated enforcement presence at the border.

At present, DPS inspection personnel staff the 9 largest ports-of-entry on a daily basis, with our inspection facilities being open the same hours as the U.S. Customs and Border Protection import lots. Our border inspection staff numbers 310.

The Texas Department of Public Safety remains committed to assisting the Federal Motor Carrier Safety Administration in meeting the requirements of Section 350 of the Fiscal Year 2002 U.S. Department of Transportation Appropriations Act which provides prescriptive direction regarding enforcement activities related to commercial motor vehicles engaged in cross border commerce. Our working relationship with the FMCSA Texas Division staff is outstanding. It is only through the support of the FMCSA that our border inspection program has grown to its present level.

Thank you again for the opportunity to address the Committee and I will be pleased to answer any specific questions the Committee may have on our Texas Border Inspection Program.

Mark Rogers, Major
Texas Department of Public Safety
Texas Highway Patrol Division - HQ
Commercial Vehicle Enforcement Operations

Before the Committee on Transportation and Infrastructure
Subcommittee on Highways and Transit
United States House of Representatives

For Release on Delivery
Expected at
1:00 p.m. EDT
Tuesday
March 13, 2007
CC-2007-029

Status of Safety Requirements for Cross-Border Trucking With Mexico Under NAFTA

Statement of
Calvin L. Scovel III
Inspector General
U.S. Department of Transportation

Chairman DeFazio, Ranking Member Duncan, and Members of the Subcommittee:

We appreciate the opportunity to testify today as you evaluate the status of safety requirements for cross-border trucking with Mexico under the provisions of the North American Free Trade Agreement. The cross border demonstration project announced by the Administration to allow a select group of Mexican trucking companies to operate beyond the commercial zones along the southwest border has refocused attention on this area.

Since 1998 we have issued seven reports and testified twice before Congress on our findings and recommendations on the Department's efforts to improve cross-border trucking safety and meet requirements established, in large part, by this Subcommittee. We expect to issue our eighth report shortly, and this work will be the basis for my testimony today.

As you know, the Department of Transportation's (DOT) Fiscal Year 2002 Transportation Appropriations Act (Section 350)[1] established a number of safety requirements and preconditions before the Federal Motor Carrier Safety Administration (FMCSA) may process applications from Mexican motor carriers for operating beyond the commercial zones. In addition, before Mexican motor carriers can operate under authority granted by FMCSA, the Inspector General (IG) must review eight specific criteria, as shown in the table.

Table. Section 350(c)(1) Criteria Subject To OIG Audit

(A) Filling and training inspection positions
(B) Training inspectors conducting on-site reviews as safety specialists
(C) Not transferring inspectors to fill positions
(D) Implementing an hours-of-service policy
(E) Having a sufficiently accurate, accessible, and integrated information infrastructure and adequate telecommunications links
(F) Having adequate capacity at crossings to conduct meaningful inspections
(G) Sufficient databases to allow safety monitoring of Mexican carriers and drivers
(H) Measures for ensuring effective enforcement and monitoring of Mexican carrier licensing

Source: Fiscal Year 2002 Transportation Appropriations Act

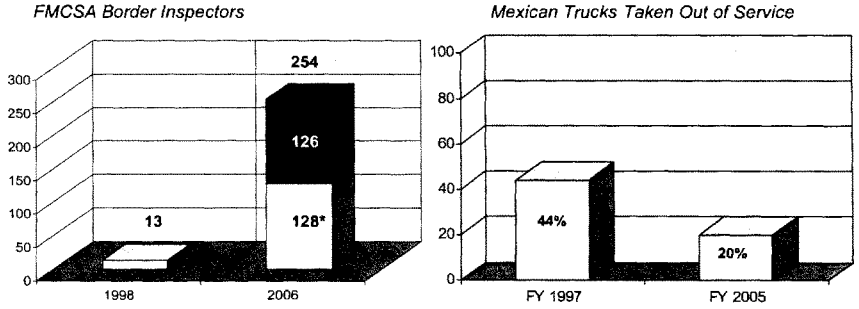
After this review, Mexican carriers that have been granted operating authority by FMCSA may proceed to operate beyond the commercial zones, provided the Secretary of Transportation certifies, in a manner addressing the IG's findings, that such operation does not pose an unacceptable risk to the American public. Our initial review of the eight criteria was completed in June 2002 and the Secretary's certification followed in November 2002. We have continued to review border operations, as required by Congress.

[1] Public Law 107-87.

Significant Progress Has Been Made in Border Safety

Data from our current review and earlier reports point to continual improvement in the border safety program. For example, FMCSA has hired and trained the inspectors, as required by the Act, thus the average number of inspections per Mexican motor carrier has increased over time. As a result, both the number of FMCSA inspectors at the border and the percentage of Mexican trucks taken out of service after inspection have improved dramatically. In 1998 we reported that FMCSA had only 13 Federal inspectors at the southern border, and that 44 percent of Mexican trucks inspected in FY 1997 were removed from service because of safety violations. By contrast, as shown in the figure, audit work now underway found 254 FMCSA enforcement personnel at the border (which includes 128 inspectors), and the percentage of Mexican trucks placed out of service following inspections had dropped to 20 percent in FY 2005, a figure comparable to the out-of-service rate for U.S. trucks.

Figure. Comparison of Border Inspectors and Mexican Trucks Taken Out of Service Over Time



*Data as of June 2006. In addition to inspectors, another 126 FMCSA enforcement personnel identified included 49 auditors, 47 investigators, and 30 supervisors or support staff.

Our current work also assessed FMCSA's actions in response to our last report to the Department, issued in January 2005.[2] In that report we found that FMCSA had in place the staff, facilities, equipment, and procedures necessary to substantially meet the eight specific criteria. The report made four recommendations for improvement, which addressed actions relevant to the eight criteria. Of the four issues, two have been adequately addressed.

[2] OIG Report Number MH-2005-032, *Follow-up Audit of the Implementation of the North American Free Trade Agreement's (NAFTA) Cross Border Trucking Provisions,* January 3, 2005. OIG reports are available on our web site: www.oig.dot.gov.

FMCSA and the states have made significant progress in resolving problems associated with making sure all states can take effective enforcement action against Mexican motor carriers. One of the criteria[3] subject to IG review calls for measures in place to ensure "effective enforcement" and monitoring of Mexican motor carrier licensing. The five states, which had not yet done so at the time of our last report, have adopted a rule requiring enforcement action against Mexican motor carriers or others operating without proper authority from FMCSA. Thus, all states can now place vehicles out of service or take equivalent action for operating authority violations. State officials also reported they are experiencing less difficulty in implementing these rules due to changes in the Commercial Vehicle Safety Alliance[4] criteria and training provided by both the Alliance and FMCSA.

A remaining concern we have based on contacts with officials in three states outside the border region involves procedures for obtaining information on the status of a carrier's operating authority. For example, officials at two states contacted noted difficulties with determining operating authority because the police cars did not have Internet access for checking the status of carriers. However, the two officials did not know about the 800 number from FMCSA that could be used for that purpose. At another state, the official contacted was aware of the 800 number but said few of the cars had cell phones to call FMCSA's 800 number. In our view, these examples illustrate how important it is for FMCSA to provide continued training on the topic and to maintain a good information support system so that motor carrier enforcement officials have the information they need to identify carriers operating without proper authority. We will continue to monitor this issue as part of our annual reviews.

FMCSA has also taken action needed to make certain weighing scales are fully operational.[5] Our 2005 report found that while weigh-in-motion scales were in place at the ten highest-volume crossings, at the time of our visits, the scales were not working at four Texas facilities. In response to our recommendation to identify actions needed to make all weigh-in-motion scales fully operable, FMCSA said it would require each of the three border states (Arizona, California, and Texas) having weigh-in-motion scales to have a maintenance program included in their commercial vehicle safety plans. Our current review verified that

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[3] Section 350 (c)(1)(H).

[4] The Commercial Vehicle Safety Alliance is an organization of Federal, state, and provincial government agencies and representatives from private industry in the United States, Canada, and Mexico, dedicated to improving commercial safety.

[5] This action complies with the Section 350 (a) requirement that weigh-in-motion scales be in place at the ten highest-volume southern border commercial crossings, and with the Section 350 (c)(1)(F) criteria that those border crossings have the capacity to conduct meaningful motor carrier inspections.

the plans do include this requirement, and we confirmed through visits or FMCSA documentation that all weigh-in-motion scales are operable.

Two Section 350 Criteria Require Additional Attention

Despite the progress that FMCSA has made, additional improvements are needed in two of the eight Section 350 (c) criteria subject to OIG review.

- Improving the quality of the data used to monitor Mexican commercial driver traffic convictions in the United States.
- Ensuring adequate capacity to inspect buses.

I will discuss each of these issues in-depth, along with two that are outside the specific requirements of Section 350 but which FMCSA and the Department should continue to address.

- Full implementation of a FMCSA policy on compliance with Federal motor vehicle manufacturing safety standards.
- Continued attention needed on drug and alcohol testing issues.

Finally, I will conclude today with preliminary observations about the announced cross border demonstration project.

Three Systems are in Place to Monitor Mexican Carriers and Drivers, But Data for One of the Three Systems Were Incomplete

One criteria of the Act[6] calls for an accessible database containing "sufficiently comprehensive data" for monitoring all Mexican motor carriers and their drivers that apply for authority to operate beyond the municipal and commercial zones on the United States-Mexico border. Three systems have been established to meet this requirement.

The first system monitors Mexican carriers in the United States granted long-haul authority. It is designed to identify carriers requiring compliance reviews, generate letters on corrective actions, and create a history of violations and corrective dates. Our prior audit work has verified that the system is operational.

[6] Section 350 (c)(1)(G).

The second system, Mexico's Licencia Federal Information System (LIFIS), contains records showing Mexican motor carrier commercial drivers with valid, disqualified, or expired licenses. Our work indicates that LIFIS is being accessed for enforcement purposes and the data were sufficient.

The third system, which is called the 52nd State System, contains records of traffic violations Mexican commercial drivers commit in the United States. Our current work found the system's data were incomplete. I will now discuss this issue in more detail.

52nd State System is Operational but Data Issues Require Continued Attention

The 52nd State System is needed to ensure that U.S. officials can disqualify Mexican commercial drivers operating in the United States for the same offenses that would lead to the disqualification of a U.S commercial driver. We found that 49 states and the District of Columbia can electronically record convictions into the 52nd State System.[7] However, the data also show that inconsistencies and reporting problems found previously at the border states with the 52nd State System still require continued action and monitoring. For instance:

- Data that Texas reported in the database showed a dramatic decline in the number of traffic convictions for Mexican-licensed drivers from January through May 2006. When we brought this anomaly to FMCSA's attention in July 2006, it investigated the situation and found that Texas had stopped providing conviction information to the database. Subsequently, after developing an action plan with the state, FMCSA reported that Texas has eliminated a backlog of some *40,000* Mexican commercial driver's license tickets. We do not know how long it took for the backlog to develop. The period could go back to well before 2006. According to FMCSA, Texas has the ability to provide information to the database electronically but it is currently providing information to the database using a manual process pending development of a new computer system this year.

- Our current review also found that New Mexico stopped reporting traffic convictions for Mexican commercial drivers to the database after July 2005. A subsequent review by FMCSA found that the problem was due to incorrect computer programming, which was to be corrected by the end of July 2006.

- Arizona and California also experienced problems that prevented some traffic convictions of Mexican commercial drivers from being properly recorded into

[7] The remaining state, Oregon, has committed to completing a test of its system by September 2008 and continues to submit its data on U.S. and Mexican violations manually to the 52nd State System.

the database. California was scheduled to make a change to correct the issue by October 2006. Arizona was implementing a manual procedure to address the problem and was scheduled to begin a change in the computer system this month.

To its credit, FMCSA took quick action during our current review to work with the four border states to develop corrective action plans addressing these issues. But strong follow-up action by FMCSA will be necessary to ensure that these plans are implemented. Alternatively, interim solutions should be implemented if the plans cannot be completed in a timely fashion. We also recommend that FMCSA develop a process that ensures performance of a quarterly inspection of the database, notification to states of data inconsistencies, and assurance that states take immediate steps to correct inconsistencies. The process must also ensure that this monitoring extends beyond the border states to identify problems that develop if Mexican carriers operate more extensively outside the border states during the demonstration project.

Positive Action Taken to Improve Bus Inspection Coverage, But Additional Issues Should Be Addressed

As I previously mentioned, further improvements are needed to support border inspections of Mexican buses. However, at this time, DOT does not plan to include commercial buses in the demonstration project for cross-border trucking.

The Act's criteria[8] call for adequate capacity at crossings to conduct a sufficient number of vehicle inspections and driver licensing checks; these criteria apply to buses as well as trucks. The Act provides no specific guidance distinguishing commercial buses from commercial trucks, although buses operate differently from commercial trucks at the border. Buses are permitted to enter the United States at separate border crossings and at times when commercial trucks are restricted. While our January 2005 report identified no issues specific to truck inspections, we found that sufficient staff was not available at some designated bus crossings to meet the Act's requirements for verifying the driver's commercial license and inspecting vehicles.

Our 2005 report recommended that FMCSA revise polices, procedures, staffing, and facility plans to make Mexican bus coverage consistent with FMCSA policy on vehicle and driver inspections for commercial trucks that are granted long-haul authority. In response to our report, FMCSA worked with the U.S. Customs and Border Protection Service to identify mutually acceptable procedures. FMCSA, in

[8] Section 350 (c)(1)(F).

February 2006, issued a Southern Border Commercial Bus Inspection Plan identifying ports of entry for commercial buses in each southern border state, along with a description of their respective bus inspection issues and the planned strategies for addressing those issues.

The bus inspection plan represents a positive step, but our current work identified additional bus inspection issues that should be addressed in the FMCSA plan. For example, as part of our September 2006 audit work at the Lincoln-Juarez crossing in Laredo, Texas, we identified physical space and capacity issues that prevented FMCSA and the state motor carrier inspectors from conducting bus inspections during high volume holiday periods. This important issue was not identified in FMCSA's Southern Border Commercial Bus Inspection Plan. Additional potential issues with bus inspections, such as the lack of a ramp on which to conduct inspections, were brought to our attention during contacts with inspectors at other, randomly selected border crossings.

These issues could affect the implementation of the Act's requirements for bus inspections if Mexican passenger carriers are granted long-haul authority to operate beyond the commercial zone.

Two Non-Section 350 Issues Not Specified in the Act Also Need Continued Attention

Action is needed on implementing FMCSA's policy from 2005 on compliance with motor vehicle safety manufacturing standards. Our 2005 report discussed a pending rule that would have required all carriers operating in the United States, including Mexican motor carriers, to display a label that the vehicle was certified by the manufacturer as meeting all applicable Federal motor vehicle safety standards. In August 2005, FMCSA subsequently withdrew the rule based on its determination that it could effectively ensure compliance with the Federal motor vehicle safety standards through effective enforcement of the current motor carrier safety regulations and policies. At the same time it issued internal policy to its staff on compliance with motor vehicle safety standards, which included instructions on how inspectors could use vehicle identification numbers to make this determination. FMCSA reported that certain procedures in the policy had been implemented; however, the policy noted that further guidance would be forthcoming before the policy would go into effect. To date, no additional guidance has been provided although FMCSA reported that they were reassessing whether future guidance is necessary.

Prompt resolution of the issue and full implementation of this policy on compliance with motor vehicle safety standards will help ensure that inspectors are able to identify vehicles not meeting the requirements established for Mexican-

domiciled carriers. FMSCA has issued a policy requiring Mexican-domiciled carriers applying to operate in the United States to certify that their vehicles were manufactured or retrofitted in compliance with Federal motor vehicle standards applicable at the time they were built, and plans to confirm that certification during the pre-authority safety audit and subsequent inspections. If FMSCA or state inspectors determine, through vehicle inspections or during a pre-authority safety audit, that Mexican motor carriers are operating vehicles that do not comply with the safety standards, FMSCA may use this information to deny, suspend, or revoke a carrier's operating authority or certificate of registration, or issue penalties for the falsification.

Further, SAFETEA-LU[9] charged the Administrator of FMSCA with conducting a review to determine the degree to which Canadian and Mexican commercial motor vehicles comply with Federal motor vehicle safety standards. This review was to have been completed within 1 year of enactment—by August 2006. The review has not yet been released by the Department.

Continued attention is needed on drug and alcohol testing issues. FMCSA has issued a policy as required under the Act regarding drug and alcohol testing. However, issues noted in our last report on this topic but not included in the Act's requirements need continued attention. In our 2005 report, we noted that Mexico lacked a certified drug-testing laboratory, but that drug and alcohol test-collection facilities in Mexico were sending specimens to certified labs in the United States. In a 1998 memorandum of understanding between DOT and its Mexican equivalent, the Mexican authorities agreed to follow collection procedures equivalent to those used by DOT. In 2005, we recommended that FMCSA establish milestones to ensure Mexican motor carrier drug and alcohol testing issues—such as the adequacy of controls at collection sites—are addressed. Our current work shows that FMCSA has continued to meet with officials on these matters. Given the announcement of the new demonstration project, FMCSA should continue to work, in conjunction with other appropriate offices, to ensure that drug and alcohol procedures, such as the establishment of sufficient controls at collection sites, are adequate.

Observations on the Cross-Border Demonstration Project

I would now like to turn to the just-announced cross border demonstration project. While our current audit did not include an assessment of this program, we would offer the following two immediate observations based on current and past work:

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[9] Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109-59, August 10, 2005).

- *FMCSA will need to establish good screening mechanisms at the border crossings, in cooperation with the U.S. Customs and Border Protection Service, to ensure that long-haul trucks participating in the demonstration project are identified for required licensing checks and inspections from among the large number of commercial trucks entering the United States daily at each commercial crossing.* FMCSA's Cross-Border Truck Safety Program states that "every truck that crosses the border as part of the pilot will be checked—**every truck, every time**." This could be problematic. Some 4.6 million commercial trucks entered the United States from Mexico in FY 2005. To screen out demonstration project participants from among this high volume of traffic, it will need to simultaneously screen vehicles participating in the demonstration project from among all commercial traffic crossing the border while also continuing to inspect vehicles and check drivers. Screening carriers participating in the demonstration project may very well require close coordination with Customs and Border Protection agents, who have initial interaction with these motor carriers. Our observations at one high-volume border crossing illustrate the challenge posed in screening demonstration project participants.

  Hundreds of vehicles entered the United States at the high-volume crossing each day; FMCSA selected vehicles for inspection from the line of trucks waiting to exit the border crossing. However, once the vehicles were diverted, no FMCSA personnel remained at the screening point to monitor carrier traffic. Unless this practice is changed, or other procedures for screening are developed in conjunction with U.S. Customs and Border Protection Service for the demonstration project, FMCSA's commitment to check every truck, every time, could be at risk.

- *FMCSA needs to establish clear objectives, milestones, and measures of success.* The demonstration project could provide a good opportunity to test FMCSA's preparations, evaluate the agency's performance, and assess the risks, if any, posed by opening the border. However, the agency should establish meaningful criteria for measuring the demonstration project's success and for determining whether to open the border to a greater number of Mexican carriers at its conclusion. Information provided to us to date does not include details of how the demonstration project's success will be evaluated.

This concludes my statement. Attached to my statement is additional information on our prior audit reports. I would be pleased to answer any questions that you may have at this time.

Prior Audit Coverage by the Department of Transportation's Office of Inspector General

OIG Report Number MH-2005-032, "Follow-up Audit of the Implementation of the North American Free Trade Agreement's Cross-Border Trucking Provisions," January 3, 2005

We reported that FMCSA has sufficient staff, facilities, equipment, and procedures in place to substantially meet the eight Section 350 safety provisions subject to OIG review in the FY 2002 Transportation and Related Agencies Appropriations Act (The FY 2002 Act). However, until an agreement or other understandings related to on-site safety reviews is reached with Mexico, FMCSA cannot, in our view, grant long-haul operating authority to any Mexican motor carrier. Additionally, given new background requirements for U.S. drivers applying for hazardous materials endorsements, an agreement will need to be in place with Mexico to cover similar background requirements for vehicles owned or leased by Mexican motor carriers hauling hazardous materials. While negotiations are being carried out with Mexico on these two issues, which are preconditions to opening the border, FMCSA should close remaining gaps in reaching full compliance with Section 350 requirements related to bus coverage, enforcement authority, Weigh-in-Motion Systems, and the comprehensiveness of the data system used to monitor Mexican driver records in the United States.

OIG Report Number MH-2003-041, "Follow-up Audit on the Implementation of Commercial Vehicle Safety Requirements at the U.S.-Mexico Border," May 16, 2003

We reported that FMCSA had substantially completed the actions necessary to meet Section 350 requirements, although the report noted several incomplete items in need of action. Specifically, FMCSA needed to fill 3 enforcement personnel vacancies to reach the target of 274, complete an agreement at one of 25 border crossings to permit detaining of commercial vehicles, and ensure states adopt FMCSA's rule authorizing their enforcement personnel to take action when encountering a vehicle operating without authority.

OIG Report Number MH-2002-094, "Implementation of Commercial Vehicle Safety Requirements at the U.S.-Mexico Border," June 25, 2002

We reported that FMCSA made substantial progress toward meeting the FY 2002 Act requirements to hire and train inspectors, establish inspection facilities, and develop safety processes and procedures for Mexican long-haul carriers. FMCSA proposed to complete within 60 days those actions that were in process and

planned to meet the Act's requirements, except the hiring and training of safety investigators and training supervisors.

OIG Report Number MH-2001-096, "Motor Carrier Safety at the U.S.-Mexico Border," September 21, 2001

Our audit recommended that FMCSA strengthen safety controls at the border in the areas of staffing, safety reviews and inspections, enforcement, facilities, rulemakings, and outreach.

OIG Report Number MH-2001-059, "Interim Report on Status of Implementing the North American Free Trade Agreement's Cross-Border Trucking Provisions," May 8, 2001

Our audit found that: (1) the percentage of Mexican trucks removed from service because of serious safety violations declined from 44 percent in FY 1997 to 36 percent in FY 2000; (2) 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; and (3) there had been few needed improvements to inspection facilities used by Federal and state commercial vehicle inspectors at border crossings.

OIG Report Number TR-2000-013, "Mexico-Domiciled Motor Carriers," November 4, 1999

We found that Mexico-domiciled motor carriers were operating improperly in the United States and violating U.S. statutes either by not obtaining operating authority or by operating beyond the scope of their authority.

OIG Report Number TR-1999-034, "Motor Carrier Safety Program for Commercial Trucks at U.S. Borders," December 28, 1998

We reported that the actions in preparation for opening the U.S.-Mexico border to Mexican long-haul trucks did not provide reasonable assurance in the near term that trucks entering the United States would comply with U.S. safety regulations. With the exception of California, neither the Federal Highway Administration nor the states' plans provided for an adequate presence of inspectors at border crossings for trucks currently operating in the commercial zones.

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