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CROSS-BORDER TRUCKING WITH MEXICO

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BEFORE A

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COMMITTEE ON APPROPRIATIONS

UNITED STATES SENATE

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CROSS-BORDER TRUCKING WITH MEXICO

THURSDAY, MARCH 8, 2007

U.S. SENATE,
SUBCOMMITTEE ON TRANSPORTATION AND HOUSING
AND URBAN DEVELOPMENT, AND RELATED AGENCIES,
COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 9:15 a.m., in room SD–138, Dirksen Senate Office Building, Hon. Patty Murray (chairman) presiding.

Present: Senators Murray, Lautenberg, Bond, Bennett, and Allard.

OPENING STATEMENT OF SENATOR PATTY MURRAY

Senator MURRAY. The subcommittee will come to order.

Today we are examining the cross-border long-haul trucking with Mexico, and I want to thank all of our witnesses for sharing their insights with us here this morning.

I'm disappointed that one of our scheduled witnesses is not here today. The Transportation Undersecretary of Mexico will not be testifying this morning. The Mexican Government has now decided his appearance would not be appropriate. That's unfortunate, because I believe he could have provided some important insights this morning. The Government of Mexico has offered to make the Undersecretary available for private meetings with Senators on this topic, at some future time.

This subcommittee has a long history with this issue, as does the full Senate. When we debated the 2002 Transportation Appropriations bill, the entire Senate was tied up with this issue for almost half a month.

I want to offer some quick background on how we got here, and what I hope that we will learn today. Back in 2001, after a ruling by a NAFTA panel, the Bush administration announced its plan to implement the cross-border trucking provisions of NAFTA, and to open our southern border to Mexican trucks to travel anywhere within the United States. The Bush administration took this stand despite numerous findings by the Government Accountability Office, the DOT Inspector General, and others that there were numerous and significant safety risks that needed to be addressed.

Those safety risks included findings that the DOT did not have an adequate plan for inspecting Mexican trucks coming across the border. The DOT did not have an adequate number of safety inspectors, and the inspectors they did have were not adequately trained. There was not adequate property at the southern border to allow DOT inspectors to place Mexican trucks out-of-service for

any safety deficiencies. There was no mechanism in place to insure that Mexican truckers were complying with U.S. hours-of-service laws. There was no way to validate whether the commercial drivers licenses used by Mexican truckers were authentic and up to date. There were not adequate facilities at the Mexican border for the DOT to conduct an adequate number of truck inspections. There were not scales at the Mexican border to determine whether Mexican trucks were adhering to U.S. truck weight limits. There was not adequate data available to inspectors to determine whether Mexican trucking companies crossing the border had an acceptable safety record. And the Federal Motor Carrier Safety Administration was years behind in publishing numerous rules that were absolutely essential, if an adequate safety regime was ever going to be enforced.

In the wake of the Bush administration's announcement, the House of Representatives, which was then under Republican control, voted by a 2 to 1 margin to place an amendment on the Transportation Appropriations bill that prohibited any long-haul Mexican trucks from coming across the border. President Bush quickly threatened to veto that bill. So in the wake of President Bush's veto threat, Senator Shelby and I drafted a very comprehensive provision to address the many critical safety concerns surrounding Mexican trucks, without including an outright prohibition on Mexican trucks entering our country.

Our provision included dozens of reasonable safety requirements that the DOT and the Mexican authorities would have to meet, before long-haul Mexican trucks could have access to our entire interstate highway system. We sought to address each of the many concerns raised by the DOT Inspector General, the Government Accountability Office, and others. We were on the Senate floor for 2 weeks. During that time, the Senate took four clouture votes and voted on eight separate amendments dealing with the issue of Mexican trucks.

In the end, we succeeded in getting the Murray-Shelby compromise off the Senate floor, because our provision was balanced and addressed the problems head-on. Rarely has the Senate debated an aspect of Senate Transportation Appropriations bill so thoroughly.

Tragically, just weeks after our bill got off the Senate floor, the Nation experienced another event that would greatly inform our debate. We experienced the horror of September 11, 2001. When we got to conference much later that year, our compromise was included with slight modification as section 350 of the final Transportation Appropriations bill. And from that day forward the Department of Transportation and the Mexican authorities began working to comply with each of those provisions in section 350.

Two weeks ago, the Bush administration announced that, in their view, they have now fulfilled every aspect of section 350 and they were ready to open the southern border to long-haul cross-border trucking. However, they did not announce that they would be opening the border to each and every Mexican commercial vehicle seeking to operate throughout the United States. Instead, they announced a 1-year pilot project with special restrictions. Under their pilot project, certain safety precautions would be even more strin-

gent than those required under section 350. Certain commercial vehicles, namely, buses and trucks carrying hazardous materials would not be allowed to participate.

Now, as I look at how this pilot project is structured, I'm very concerned that DOT may be deliberately allowing only the top Mexican truck companies to participate in a pilot project, simply to skew the results so the outcomes looks better. If you're only looking at the best of the best, you might not get an accurate picture of what full cross-border trucking will look like. That makes me wonder if this pilot project is really just designed to produce a preordained conclusion.

It also excludes some categories of motor carriers, like buses and trucks carrying hazardous materials. We need to hear exactly how DOT eventually plans to ensure the safety of those cross-border vehicles, as well.

A meaningful discussion of safety and security cannot begin and end with section 350. That legislation was written more than 5 years ago. In our new post-9/11 world, we have learned a lot more about terrorist threats, and how to prevent them. We've also learned a lot more about illegal immigration, and the methods used to smuggle citizens into the United States.

For example, in May 2003, 70 illegal immigrants were stuffed inside a tractor trailer and were being transported to Houston. Nineteen of the 70 people suffocated. Less than 3 weeks ago, 40 people were discovered in the back of a tractor trailer in Texas. Thankfully, they were all alive.

This morning's hearing will also focus on the economics of cross-border trucking. We need to explore why U.S. trucking firms are facing delays in accessing Mexico. We are told that Mexican firms will have full access to the United States market in just a few weeks, but that U.S. firms will have to wait until half of the year-long project is over before they can enter Mexico. That does not sound like equal access to me.

Perhaps the most important question we need to address is this: What happens after the administration's proposed 1-year pilot project? Should we assume that after 1 year the border will be open to all long-haul Mexican trucks? Is 1 year an adequate period of time to determine whether there has or has not been unacceptable safety risks?

The Federal Motor Carrier Safety Administration is not famous for doing anything quickly. Is that the agency that will be evaluating the success of this pilot program? If so, what criteria will they be using? There's certainly reason to question whether this Agency can adequately evaluate a 1-year pilot project when you consider the fact that certain requirements of section 350 do not kick in until 18 months after the first truck crosses the border.

In the course of learning more about the administration's pilot project, I received a copy of the official record of discussion that was initiated by both Mexican and U.S. authorities. It spells out broad parameters of the anticipated pilot project, and there's one very revealing section, which makes it crystal clear that the new agreement anticipates that after 1 full year, cross-border trucking without any restrictions will commence.

If the purpose of the pilot project is to determine if we can do this safely, why is the result already agreed to by both governments? Again, it leads me to wonder if the demonstration project is more show, than scrutiny.

While some witnesses today might like to keep us focused just on the administration's so-called 1-year pilot project, this subcommittee needs to get the full picture of what happens 1 year from now, when this border is fully opened. I will be asking some detailed questions about this document and what the administration intends to do after the pilot project is completed, and I expect to hear complete answers.

I, like many of my colleagues in the Senate, voted for NAFTA. I believe in the economic benefits that expanded trade can provide for our country. I see those benefits first-hand every day in my home State of Washington. I know how trade supports and creates jobs, but I also know that safety must never take a back seat to economic prosperity. When we first debated this issue in the Senate back in 2001, I argued that we could have both safety and economic growth. Today's hearing will hopefully reveal whether the Bush administration, and Mexican officials, have done what they need to do to make that possible.

And now I'd like to turn to my ranking member, Senator Bond.

OPENING STATEMENT OF SENATOR CHRISTOPHER S. BOND

Senator BOND. Thank you very much, Madame Chair.

And thank you very much, Madame Secretary. We welcome you and the other members of the panel appearing to testify before us this morning.

Obviously we're here today to talk about a very contentious and interesting proposal to open up our borders to allow Mexican carriers to deliver international cargo throughout the United States. The administration proposal, as the chair has indicated, would allow Mexican trucks to haul freight into and throughout the United States, beyond the exiting 25-mile commercial zone, so there are legitimate concerns.

As part of this proposal, however, American trucks are supposed to enjoy reciprocal hauling rights throughout Mexico. You may have noticed in this current Congress, there is a minimum amount of high enthusiasm towards the promotion of free trade, economic expansion, and keeping up with globalization. And I'm sure many of you will recall the uproar surrounding, and the opposition expressed, to the sale of U.S. terminal operations to a United Arab Emirates company, Dubai World Ports.

I happen to think that was one of the worst things that Congress did last year because of several impacts. But, obviously I was not in the majority on that. The actions that Congress took to undercut and oppose that deal resulted in the undermining of our international trade and economic leadership throughout the world. It even sent a very bad message to a great ally, and said to the Muslim world that we do not distinguish between a few terrorists, and the moderate Muslims who must be our friends.

I believe that open trade is critical to our ability to increase investment, to create jobs, to promote economic opportunity, and to provide a better lifestyle for our consumers in the United States.

The simple fact remains that NAFTA passed in 1993 and as Members of Congress, we have the responsibility to uphold the law, and to assure that we take no deliberate action to violate it. As a matter of fact, this trucking concept is not as new as we think. Nine trucking companies were originally grandfathered in to the NAFTA agreement and had been operating under the previous terms already. In the case of Mexico, opening up our transportation system is vital to both our nations' economic and open-border policies, and would allow for easier and expanded trade. It should promote strong economic growth on both sides of the border.

I know there are concerns, and I share legitimate concerns about opening our borders. Congress has a responsibility to ensure these concerns are identified and fully resolved. For example, would our roads be safer? I would expect this demonstration to meet that goal. I do know that I have seen no evidence that Mexican long-haul trucks and their drivers are less safe than their U.S. counterparts. I understand that the latest data shows the safety records of the United States and Mexico are comparable.

Can we, and should we, do more? The answer is yes. But, we can not let the perfect stand in the way of the practical. I do question how we can spare sending inspectors to Mexico, when only a small percentage of U.S. trucking companies are inspected each year. I want to be certain there will be no shortage of U.S. inspectors available for accomplishing their already existing U.S. duties, especially before we allocate U.S. inspectors for inspection of Mexican companies, trucks, and drivers.

The demo also calls for all Mexican entrants to meet more strenuous requirements than what is currently required of both U.S. carriers and our Canadian partners. From full truck safety, inspections, driver's license and health inspections for drug, alcohol, and physical questions, and obtaining adequate insurance for every vehicle on the road while in the United States.

Consequently, American drivers should be able to be assured that they will not be hit with higher insurance premiums to make up for uninsured drivers from South of the border. I'm curious to hear more about what the insurance companies are saying, and if there are any problems or outstanding concerns with regard to issuing insurance policies to the Mexican companies selected under this demo project.

Another of, I think, all of our concerns should be congestion and the resulting pollution. A prohibition on Mexican trucks traveling beyond the regulated commercial zone of the United States has resulted in much more congestion and a high degree of pollution at the borders.

It's important to us to keep border traffic flowing, and that the proper documentation of the companies and drivers be captured prior to reaching our borders. Providing these vehicles full access to the United States will streamline the process and reduce cost. As this process becomes more familiar with officials at the borders and the trucking companies, I anticipate a reduction in the use of drayage companies, which many believe have caused the problem, as we move toward long-haul carriers leaving Mexico, and delivering products at final destinations in the United States.

I also look forward to hearing more about the application process, to ensure that the selection of Mexican companies have been vetted with the assurance that all companies will meet U.S. safety and performance requirement, as well as all Homeland Security requirements. I also hope the U.S. trucking companies will receive the same fair and reciprocal treatment in Mexico, as to applications and other requirements that we expect to provide to Mexican truckers in the United States under the demonstration. Let us emphasize that nothing less will be acceptable.

Madame Secretary, I anticipate your testimony on these issues and a commitment by DOT that all Mexican and U.S. truckers be treated fairly and equitably under the demonstration. I also expect DOT to work with the Department of Homeland Security to ensure complete safety of the United States and all U.S. citizens under this demonstration. While I support the overall concept of the demonstration, I also expect to understand exactly how we will monitor it as a whole. And I'm confident that you, Madame Secretary, and your team will do what is required under this demo program in a manner consistent with the agreement and U.S. requirements.

And put quite simply, we have made a treaty commitment. This subcommittee and the Congress have established safety conditions to be met. We need to keep our part of the bargain and want to hear from you on how the legislative conditions and the other safety requirements are being met. I'm sure we'll be hearing more about this later on, but Madame Secretary, I look forward to hearing your testimony, as well as that of the other members on the panel.

And I thank you, Madame Chair.

Senator MURRAY. Thank you, Senator Bond.

Senator Allard.

STATEMENT OF SENATOR WAYNE ALLARD

Senator ALLARD. Well, thank you, Madame Chairman for convening today's hearing on cross-border trucking with Mexico. Congress has followed the issue closely for many years, and so I appreciate the opportunity to get more information on the administration's recent announcement of the cross-border trucking pilot program.

In my view, America has grown based on international trade. Christopher Columbus wasn't simply on a pleasure cruise, he was looking for new trading partners when he discovered America. And England supported the American colonies, not out of paternalistic loyalty, but because of the trading opportunities they presented. Modern-day America has grown and prospered, because of our international trading opportunities, although the mode of transportation used in trading has changed, international trading has been good for America.

I strongly believe in the benefits of trade, thus I'm a strong proponent of free trade. I supported NAFTA, and believe that it has been very good for Colorado. I regret that it's taken so to implement this particular provision of NAFTA. Cross-border trucking has the potential to eliminate delays and unnecessary cost in trade with our neighbors to the south. It will be good for both Mexico, and the United States.

I look forward to working with the administration to see that the pilot program is implemented quickly and successfully. Today's hearing will be an excellent opportunity to learn more about those plans. I'd also like to encourage the Department of Transportation to keep us informed on the progress of the pilot program. Although a 1-year pilot program sounds like a long time, it's actually quite short. The program will have to be evaluated and decisions about the future of cross-border trucking will have to be made before the year is concluded.

We have a number of distinguished witnesses, and I would like to thank them for being here today. Their testimony will help this committee and myself understand the matter better and should prove very helpful.

Thank you.

Senator MURRAY. Thank you, Senator Allard.

We do have a number of witnesses today, three on the first panel, we'll be speaking with five on the second panel. So, I'm going to ask witnesses to keep their remarks to 5 minutes. We do have your written testimony. All committee members will have that available. So please bear with me if I try to shorten your remarks, if you go over, I will try and give you a little bit of warning, but I would ask that each of you try and keep your remarks to 5 minutes.

On our first panel, we will be hearing from Secretary of the Department of Transportation, Mary Peters. We will then hear from Calvin Scovel, who's the Inspector General for the Department of Transportation, and then from Jayson Ahern, Assistant Commissioner with the Department of Homeland Security.

Secretary Peters, we'll begin with you.

STATEMENT OF HON. MARY E. PETERS, SECRETARY, DEPARTMENT OF TRANSPORTATION

ACCOMPANIED BY JOHN H. HILL, ADMINISTRATOR, FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

Secretary PETERS. Madame Chairman, thank you so much for the opportunity to be here today. Ranking member Bond, and other members of the subcommittee. We appreciate the opportunity to discuss the Department of Transportation's demonstration project, to implement the trucking provisions of the North American Free Trade Agreement.

I am pleased to describe to you what the Department has done to implement the Murray-Shelby Amendment, section 350 of fiscal year 2002 appropriations act. And the additional steps that we have taken to ensure that we safeguard the safety, and the security, of our transportation network, even as we strengthen trade with a close neighbor and important trading partner.

As we announced on February 23, the U.S. and Mexican Governments have agreed to implement a limited, 1-year demonstration project, to authorize up to 100 Mexican trucking companies to perform long-haul and international operations within the United States, for 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 that the demonstration project, there will be no trucks authorized to transport hazardous materials, nor any bus transportation of passengers. And no authority to operate longer combination vehicles, or any vehicles that exceed the size and weight limitations.

The program will meet, and in some case 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 audits of Mexican companies at the company's headquarters, in Mexico. In fact, for the duration of this demonstration program, FMCSA will perform 100 percent of these audits on site.

That means that U.S. inspectors will have eyes on, hands on, access to all of the company's records, equipment, and personnel as we determine whether that company has the systems in place to meet the section 350 requirements. And the members of the subcommittee know very well that section 350 includes a very comprehensive, a very thoughtful set of requirements to ensure that long-haul Mexican trucks, and drivers, operate safely in the United States.

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 rules. They must be able to understand, and respond, in English, to directions and questions from U.S. inspectors. They must undergo drug and alcohol testing and can not, of course, 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 easily identified by customs and border protection services, FMCSA, State inspectors, and more than 500,000 State and local law enforcement officials. We are working very closely with our partners in the States to ensure that they understand the parameters of the program, and are able to enforce the law effectively.

Finally, in addition to the Federal requirements, the Mexican trucks operating in this demonstration project will be required to adhere to the same State requirements as U.S. trucks, including size and weight requirements, and pay all applicable fuel taxes and registration fees. We appreciate the thoughtful safety-related requirements established by this committee in 2001, for 5 years, our employees have been working diligently to implement these requirements. Because we fully agree with you that protecting Americans on our highways is our most important responsibility.

It is also important for us to bear in mind that trucks from Mexico have always been allowed to cross our Southern border into the commercial-zone areas. In fact, every day drivers from Mexico operate safely on roads in 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 trucks operated by companies here in the United States.

We have developed this limited program to demonstrate to you, to the Congress, to the American people, that we will be able to implement section 350, to allow Mexican trucks to operate safely beyond the commercial zone.

PREPARED STATEMENT

Madame Chairman, thank you for the opportunity to appear before the subcommittee today. I look forward to working with you to create new opportunities, new hope, and new jobs, both north and south of America's borders while continuing to ensure the safety of America's roadways. Administrator Hill and I would be pleased to answer your questions at the appropriate time.

Thank you.

[The statement follows:]

PREPARED STATEMENT OF HON. MARY E. PETERS

Chairman Murray, Ranking Member Bond, 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 (Public Law 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 percent for the United States, 49 percent for Canada, and 40 percent 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 12 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 United States 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 1-year demonstration project to authorize up to 100 Mexican trucking companies to perform long-haul operations within the United States. 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 United States and Mexico. This will be the first time that American trucks have been allowed to make deliveries in Mexico in over 25 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.

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 United States. 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 United States.

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 vehicles on U.S. highways.

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 United States. We appreciate this subcommittee's guidance and commitment to highway safety by enacting provisions to ensure safe operation of vehicles involved in cross-border trucking. 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 my written testimony a table of these requirements and the actions FMCSA has taken to satisfy them.

Two weeks ago, I traveled to Monterrey, Mexico, to visit a Mexican trucking company. There, I 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 United States 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 United States. 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 United States, which means they will be inspected at least once every 90 days.

This safety audit is merely the beginning of the Department'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. FMCSA has 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 250,000 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 United States, 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 seven 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. FMCSA 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 United States.

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 United States from Mexico were manufactured in the United States 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 3 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 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.

Senator MURRAY. Thank you Madame Secretary. Mr. Scovel.

STATEMENT OF HON. CALVIN L. SCOVEL III, INSPECTOR GENERAL, DEPARTMENT OF TRANSPORTATION

Mr. SCOVEL. Thank you.

Madame Chairman, ranking member Bond, and members of the subcommittee, thank you for the opportunity to testify today, as you evaluate the safety of cross-border trucking with Mexico under the provisions of NAFTA.

I'm joined at the witness table this morning by Mr. Joseph Come from my staff. While I'm relatively new in office, Mr. Come has worked these issues for a number of years for us.

IG ROLE

Our role, as established in fiscal year 2002 Transportation Appropriations Act, is to review eight specific criteria and provide the results to the Secretary to use in determining whether Mexican carriers granted operating authority by FMCSA, they provide, they proceed beyond the commercial zone of the border States without posing an unacceptable safety risk to the American public. There's also mandated by the act—we have continued to perform substantial audit work on issues surrounding border safety. We've issued seven reports since 1998, and we'll issue our eighth report shortly.

PROGRESS IN BORDER SAFETY

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 in Texas, New Mexico, Arizona, and California, some multiple times. We 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 2 States had this capability.

CONCERNS ABOUT DATA ON TRAFFIC CONVICTIONS

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, which is needed to allow U.S. officials to bar Mexican drivers from operating here for the same offenses that would bar American drivers. We have found reporting problems and other inconsistencies 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 the 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.

OBSERVATIONS ON PILOT PROGRAM

Third, regarding FMCSA's just-announced pilot program expanding cross-border trucking with Mexico, we have two observations based on our past and current work. One, FMCSA will need to ensure that it has 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 the standard of "every truck, every time." This will not always be easy.

The 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. The driver is then taken out of line for the license check. This process could be streamlined if FMCSA enforcement personnel worked collaboratively with Customs and Border Protection Service.

No. 2, 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 a greater number of carriers in the future. To date, we have seen no details on how the programs success will be evaluated.

BUS INSPECTIONS

Finally, we see the need for additional action concerning border inspections of Mexican buses. In 2005, we recommended action to improve coverage of bus inspections. FMCSA has taken some steps to accomplish this, but additional issues need to be addressed, especially if Mexican passenger carriers are granted long-haul authority to operate beyond the commercial zone.

PREPARED STATEMENT

Madame Chairman, I'm almost out of time. If I may ask for 1 more minute, I will complete my statement.

Senator MURRAY. If you could sum up for us, I would appreciate it.

Mr. SCOVEL. Indeed.

In summary, Madame Chairman, based on our work over the past 8 years, we see continual improvement in the border safety program along with the 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 and report on its progress.

This completes my statement. I'd be happy to answer any questions that you, or other members of the subcommittee, may have.

[The statement follows:]

PREPARED STATEMENT OF CALVIN L. SCOVEL III

STATUS OF SAFETY REQUIREMENTS FOR CROSS-BORDER TRUCKING WITH MEXICO UNDER NAFTA

Chairman Murray, Ranking Member Bond, 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 pilot program 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.

[1] Public Law 107–87.

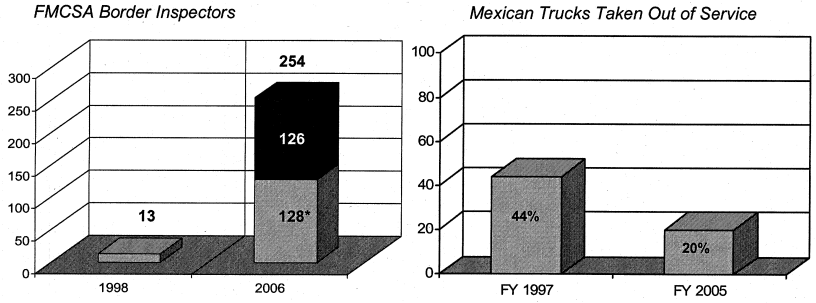
Table. Section 350(c)(1) Criteria Subject To OIG Audit
(A) Filling and training inspection positions (B) Training inspectors conducting on-site reviews as safety specialists (C) Not transferring inspectors to fill positions (D) Implementing an hours-of-service policy (E) Having a sufficiently accurate, 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 8 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.

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 fiscal year 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 fiscal year 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.

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 10 highest-volume crossings, at the time of our visits, the scales were not working at 4 Texas facilities. In response to our recommendation to identify ac-

[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.

[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 10 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.

tions 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 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 2 of the 8 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 2 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 pilot program.

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.

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.

[6] Section 350(c)(1)(G).

[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.

—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 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 pilot program.

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 pilot program 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 were 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 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

[8] Section 350(c)(1)(F).

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. FMCSA 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 FMCSA 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, FMCSA 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 FMCSA 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 pilot program, 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.

THE PILOT PROGRAM

I would now like to turn to the just-announced pilot program. 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:

—*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 pilot program 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 fiscal year 2005. To screen out pilot program participants from among this high volume of traffic, it will need to simultaneously screen vehicles participating in the pilot program from among all commercial traffic crossing the border while also continuing to inspect vehicles and check drivers. Screening carriers participating in the pilot 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 pilot program participants.

[9] Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109–59, August 10, 2005).

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 pilot program, 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 pilot program 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 pilot program'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 pilot program'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 8 section 350 safety provisions subject to OIG review in the fiscal year 2002 Transportation and Related Agencies Appropriations Act (the fiscal year 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 2 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 fiscal year 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 fiscal year 1997 to 36 percent in fiscal year 2000; (2) FMCSA increased the authorized number of inspectors at the southern border from 13 in fiscal year 1998 to 60 in fiscal year 2001, and requested 80 additional enforcement personnel in its fiscal year 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.

Senator MURRAY. Thank you very much. Mr. Ahern.

STATEMENT OF JAYSON P. AHERN, ASSISTANT COMMISSIONER, OFFICE OF FIELD OPERATIONS, CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY

Mr. AHERN. Madame Chairman, Senator Bond, Senator Allard, thank you very much for the opportunity to be here this morning with my colleagues from the Department of Transportation and the Federal Motor Carrier Safety Administration to speak briefly in the role that the Department of Homeland Security, and specifically, U.S. Customs and Border Protection, plays in protecting our Nation, and our involvement in this ongoing demonstration project.

U.S. Customs and Border Protection operates at the nexus of national security, along our Nation's borders. We employ over 43,000 employees to manage, control, and protect our Nation's borders, at and between the official ports of entry, as well as in many foreign locations. In order to accomplish our mission of securing America's borders and facilitating trade, CBP has developed a layered enforcement strategy, as part of our philosophy of a smart and extended border strategy designed to protect our country and also the economic growth of the global supply chain.

On the southwest border, CBP specifically utilizes advanced cargo information, automated targeting and screening, private-public sector partnerships, and cutting-edge technology to meet our mission and gain operational control. While we do this, we make sure to balance our enforcement and security requirements against economic growth and prosperity.

Please allow me to briefly talk about the advance cargo information as required by the Trade Act of 2002. We're required, for every truck coming into this country, to get electronic information received 60 minutes in advance of its arrival. If they're involved with one of our Trusted Trader Programs or Free and Secure Trade Program, known as FAST, we get that information electronically, 30 minutes in advance.

Certainly our automated commercial environment has been an evolving process for us, to get better information for screening and targeting. A key feature of this is the involvement of the Department of Transportation in the International Trade Data System, known as ITDS, which provides a single portal of information for U.S. Government agencies to provide all of the relevant data for us to execute our missions.

We then take a lot of this information and put it through an Automated Targeting System, known as ATS. It's our principal tool for using risk management on the available information for commercial shipping, integrating intelligence and information, and expert rule-based algorithms.

CBP also utilizes private sector partnerships; we think it's essential that we conduct our mission at the border, by engaging with carriers, importers, exporters, and all of the people that are involved with the trade. We've developed two programs: the Free and Secure Trade Program, in which we have a driver that goes through a very rigorous background process; and also our Custom Trade Partnership Against Terrorism, which has over 6,000 certified members.

I will talk about these layers, because I think it's important to note that the universe of trucks that is coming across the border today, which includes approximately 5 million trucks a year from Mexico into the United States, is not going to change with this demonstration project ongoing. More importantly, our role at the border within the Department of Homeland Security and Customs and Border Protection is not going to change for these trucks either.

We're going to continue to use these layers in enforcement on the driver and the carrier, as well as use our large-scale X-ray technology and our radiation portal-monitors. Currently, we have 96 percent of the trucks go through radiation portal-monitors to make sure there's not an illicit nuclear or radiological device that could be imported into the United States through these trucks. None of our security features will be diminished one bit as a result of this demonstration project on the universe of trucks that will continue to be coming across our Nation's borders.

I think it's also important to note, as I begin to wrap up at this point, that the essential piece, beyond the technology and the layered enforcement, is our front-line officers. We will continue to interview every truck driver coming across the border, making sure they're admissible to the United States. In fact, there will be an additional feature that will be provided on drivers that will be enrolled with this program. They will actually have to get permission to leave the border zone, which is 25 miles for most of the border with the exception of Arizona which is 75 miles.

They'll have to go through an interview with an officer and be biometrically-enrolled with the US VISIT program; we actually have an opportunity to do a biographic, as well as a biometric, check of the individual before they're granted permission to leave the border zone.

PREPARED STATEMENT

At this point, I will summarize by saying we have been a very strong partner since the onset of this demonstration project. I think it's important as we move forward, to continue that partnership and collaboration, and that we align a lot of our programs as we go forward, so that we can have a good evaluation at the end of the demonstration cycle.

Thank you very much.

[The statement follows:]

PREPARED STATEMENT OF JAYSON P. AHERN

Madam Chairman Murray, members of the subcommittee, thank you for the opportunity to be here this morning with my colleagues from the Department of Transportation and the Federal Motor Carrier Safety Administration, to speak briefly on the role that U.S. Customs and Border Protection plays in protecting our Nation, and on CBP's involvement with the Cross Border Trucking Demonstration Project. U.S. Customs and Border Protection operates at the nexus of national security and American economic security. CBP includes more than 43,000 employees to manage, control and protect the Nation's borders, at and between the official ports of entry.

In order to accomplish our mission of securing America's borders and facilitating trade, CBP has developed a layered enforcement strategy, part of CBP's philosophy of a smart and extended border security strategy designed to protect our country and the global supply chain. On the Southwest border, CBP utilizes in combination, Advance Cargo Information, Automated Targeting and Screening, Private and Public Partnerships and Cutting Edge Technology, as well as nearly 5,000 Officers in order to gain operational control to provide the level of security needed to protect the Homeland. All the while, recognizing the need to balance our enforcement with the facilitation of legitimate travel and trade.

Advance Electronic Cargo Information.—As required by the Trade Act of 2002, advance cargo information must be provided through the CBP-approved automated data interchange. For truck cargo, the Automated Commercial Environment (ACE) is the approved system and information must be provided 1 hour prior to the arrival of the truck at the border crossing for non-Free and Secure Trade (FAST) shipments or 30 minutes prior to arrival for FAST shipments. ACE has made electronic risk management far more effective by allowing full security screening by the Automated Commercial System (ACS) Selectivity module and the Automated Targeting System (ATS). Additionally, DOT is a full participating agency in the International Trade Data System (ITDS), which provides a single portal for the trade community to provide required data to all government agencies.

—*Automated Targeting System*.—CBP uses ATS to identify cargo that may pose a threat. Using risk management techniques CBP evaluates people and goods to identify a suspicious individual or shipment before it can reach our borders. To broaden the scope of targeting, CBP works with other DHS components, the Intel community, law enforcement agencies and the private sector, to expand its knowledge to better accommodate the ever-increasing demands for tactical information to continue developing and refining more sophisticated targeting tools.

—*Public and Private Partnerships*.—CBP has developed several partnerships with industry to enhance security and facilitate trade. Foremost among these are Free and Secure Trade (FAST) and the Customs-Trade Partnership Against Terrorism (C–TPAT). The FAST program, which is operational on both our northern and southern borders, establishes bilateral initiatives between the United States and NAFTA partners designed to ensure security as well as safety while enhancing the economic prosperity of partner countries. In developing this program, Mexico and the United States have agreed to coordinate to the maximum extent possible, their commercial processes for clearance of commercial shipments at the border. This promotes security and prosperity by using common risk-management principles, supply chain security, industry partnership, and advanced technology to improve the efficient screening and release of commercial traffic at our shared border. FAST is a harmonized clearance process for shipments of known compliant importers. Thus, any truck using FAST lane processing must be a Customs-Trade Partnership Against Terrorism (C–TPAT) approved carrier, carrying qualifying goods from a C–TPAT approved

manufacturer, for a C–TPAT approved importer, and the driver must possess a valid FAST-Commercial Driver Card. C–TPAT is a voluntary government-business initiative to build cooperative relationships that strengthen and improve overall international supply chain and U.S. border security. The C–TPAT program also has a strong enforcement side. CBP suspends and removes members from the program when security measures weaken and allow the supply chain to be breached.

—*Use of Cutting-Edge Technology*.—Given the magnitude of CBP's responsibility the development and deployment of sophisticated detection technology is essential. Deployment of Non-Intrusive Inspection (NII) technology continues to increase and is viewed as a "force multiplier" that enables CBP Officers to screen a larger portion of the commercial traffic. CBP is currently utilizing large-scale X-ray and gamma ray machines, along with radiation detection devices to screen cargo. As of March 2007, 183 large-scale NII systems have been deployed, 74 of which are on the Southern Border with Mexico. Last year, CBP examined, either through a physical inspection or by using NII equipment, over 26 percent of the cargo arriving from Mexico. Additionally, 963 Radiation Portal Monitors (RPMs) have been deployed nationwide with the ultimate goal of scanning 100 percent of containerized cargo and conveyances for illicit materials. These RPMs permit CBP to scan for illicit nuclear or radiological materials for 96 percent of all truck cargo and 91 percent of all personally owned vehicles arriving from Mexico.

In summary, the layered enforcement strategy I just mentioned will continue to be employed under this demonstration project, and security at our borders will not be diminished whatsoever. CBP will continue to review advanced data submitted by each and every truck prior to arrival at the port. We will continue to make a risk assessment on every truck based on this data and upon our officer's questioning of the driver. Each of these trucks will pass through a radiation portal monitor, and when any risk is present, we will use our full array of non-intrusive inspection equipment and K–9 assets to ensure that no illicit materials, contraband or illegal goods are being carried in the conveyance. Security at the border will remain paramount during this project, and will not be diminished.

Madam Chairman Murray, members of the subcommittee, I have briefly addressed CBP's initiatives that help CBP protect America against terrorists and the instruments of terror, while at the same time enforcing the laws of the United States and fostering the Nation's economic security through lawful travel and trade. As the DOT and FMCSA move forward with implementing this demonstration project, CBP will be a strong partner and will ensure that the twin goals of security and trade facilitation continue to be balanced at our SWB ports of entry. CBP has been, and will continue to be, an active partner in the development of this project. Throughout its implementation, we will continue to align our programs even further and ensure that the collaboration continues as the project progresses forward.

In closing, with the continued support of the President, DHS, and the Congress, CBP will succeed in meeting the challenges posed by the ongoing terrorist threat and the need to facilitate ever-increasing numbers of legitimate travel and trade.

Thank you again for this opportunity to testify. I will be happy to answer any of your questions.

Senator MURRAY. Thank you, Mr. Ahern.

And again, everyone's testimony will become part of the record, all members have access to it, so I appreciate your brevity this morning.

Secretary Peters, let me start with you.

According to the formal record of discussions that was initialed by both the U.S. and Mexican authorities, U.S. carriers will not be granted access to Mexico until the second half of your 1-year pilot project. We are told that it would take a couple of months for the Mexican authorities to develop an application process, so U.S. carriers can apply to carry cargo into Mexico.

Given all the time and attention and resources that both governments have given this issue over the last several years, can you tell us why it is that the United States trucking firms now have to wait 6 months to get access to Mexico markets, while Mexican trucking

firms can enter the United States under your pilot program in the next couple of weeks?

Secretary PETERS. Madame Chairman, I'd be happy to answer that question.

Last fall, at the time that the record of discussions was put into place, it was the decision of the then-Fox administration and the United States, not to proceed with a program, a demonstration program at that time. The Bush administration resumed negotiations with the new Calderon administration after the President was elected, and as you may recall there was some dissention about the result of that election, he was not cleared immediately to proceed.

However, since that time, and since Secretary Tellez has been appointed as the Secretary of Communications and Transportation of Mexico, we have renewed discussions. However, because of their very new administrations, they're not yet ready to have all of the procedures in place that would allow U.S. trucks into Mexico. It is, however, their intent to do that, as quickly as possible.

Senator MURRAY. Well will you insist on seeing the application procedures that are going to be established for U.S. carriers from the Mexican government, before you start allowing Mexican carriers into the United States?

Secretary PETERS. Madame Chairman, we will likely not see those procedures before, but certainly soon after. I certainly will exercise every option to have the Mexican officials expedite that process.

Senator MURRAY. So we may not see those, what they're going to require of us, and still allow their trucks into our country?

Secretary PETERS. Madame Chairman, I hope that we will, but we have not had that specific timeline discussion with the Mexican officials. I will engage in that discussion with them, and get back to you as soon as possible.

Senator MURRAY. You pointed out in your testimony, we've waited 14 years for the NAFTA cross-border trucking provisions to come into effect. What would be the harm in waiting another half-year so we could be sure that U.S. firms and Mexican firms are truly gaining equal access to each others' markets, simultaneously?

Secretary PETERS. Madame Chairwoman, it is absolutely important for us to proceed with that. However, this demonstration program, by exercising it at this time it will eliminate the very constant, very cumbersome, costly, outdated system of moving freight across the border with Mexico, and replace it with a safe and efficient process. We believe that we have the process in place in the United States now to comply with those requirements, and it is prudent to move forward with that process. The other fact——

Senator MURRAY. But you're not going to wait until we have equal access, and know those documents are in place, until you proceed forward?

Secretary PETERS. Madame Chairman, we would like to see those documents, certainly, and we will work with Mexico to do that. However, again, we, right now we have more than 800, I believe, that Administrator Hill can verify, applications from Mexican carriers who do want to access the United States. There are less than 10 applications from U.S. carriers who want to access Mexico at

this time. So we do feel that we can proceed with the first part, the first phase of the process.

Senator MURRAY. But, what if the procedures aren't equal, once you see their application procedures?

Secretary PETERS. Madame Chairman, we can at any time revoke the provisional authority that allows us to move forward with allowing Mexican trucks into the United States. And if we are not timely in doing so, we'd certainly be prepared to exercise that option. However, in my discussions with Secretary Tellez, he is very committed to moving as quickly as possible, to allow the reciprocal arrangement to occur.

Senator MURRAY. In your formal testimony, you talked about your 1-year demonstration program extensively, but you don't say anything about what happens at the end of the pilot project.

As I talked about in my opening statement, your own Under Secretary as well as the U.S. trade representative, and their counterparts in the Mexican Government, they initialed the document less than 4.5 months ago that laid out some of the details of your pilot project. And that document stated, and I want to read it, it says, "Third stage that commences at the end of the 12-month period, in which a full and permanent opening of the border is foreseen, and new carrier application is being incorporated in the normal operating authority procedures of each country, without quantitative restrictions."

Does that document still reflect accurately the formal positions of the United States Government?

Secretary PETERS. Madame Chairman, it does not. We want this pilot program to be substantive, as you pointed out earlier, not just for show. We will set up two monitoring groups.

One is a bi-national group between Mexico with the Secretary of Communication and Transportation, as well as U.S. Department of Transportation. This bi-national group will largely deal with technical issues that may come up in the process. However, they will also establish performance measurements and criteria that we will use to determine the success of the demonstration program.

Further, we plan to put together an advisory group of independent, outside experts who have familiarity with these issues to help us determine that we do have the right performance measures, the right criteria, and, Madame Chairman, we will report back to you periodically, so that you do not have to wait for the full year to get information. We, and you, will have information on the progress, on the measurements, on the criteria as we proceed.

Senator MURRAY. So you're renouncing that document that was initialed?

Secretary PETERS. Madame Chairman, this document, it's my understanding—and it was done before I had the opportunity to be in this position—records discussions dated December 29, 2006, but it was just that—a record of the discussions between the then-Fox administration and the Bush administration, to that point.

The document was created because the two sides had concluded not to proceed with any kind of pilot or demonstration program during the remainder of the Fox administration. It does not reflect accurately the negotiations and discussions that have occurred subsequently, with the new Calderon administration.

Senator MURRAY. Can you give me some specific examples of what you might find in your demonstration project that would cause you to close this project down?

Secretary PETERS. Absolutely, Madame Chairman.

One of those issues might be if we have—see a significant peak in out-of-service rates of vehicles that are allowed into the United States during the demonstration program. We will evaluate crashes. We will evaluate whether or not drivers are presenting themselves, having met all of the requirements that they will be expected to meet coming into the United States.

We had hoped, Madame Chairman, after this committee hearing today—so that we have benefit of your input on this—to develop drafts of what those criteria would be, and to get back to you. I can relate to you my personal experience, having grown up in Arizona, and spent much time south of the border in Mexico both for recreational purposes when I was younger, but for professional purposes, during the time that I was Secretary of Transportation in Arizona. I have seen a significant improvement in both the vehicles and the drivers.

And by the way, Arizona Department of Transportation was responsible for all commercial vehicle inspections on a State-basis. So, I had first-hand knowledge of what was going on, and I am convinced that we have a situation that can be implemented safely on a demonstration basis.

Senator MURRAY. The Inspector General, in his remarks, said that your agency needs to establish clear objectives, milestones, and measures of success for your pilot program. You're saying that those have not yet been established?

Secretary PETERS. Madame Chairman, they have not yet been established. As I indicated, we have talked about, and have some idea of what those might be, but we wanted benefit of this committee hearing, as well as the opportunity to discuss this further with the Inspector General—who, by the way, will be asked to be part of the ongoing monitoring process, as well—before locking us in.

Senator MURRAY. Part of the oversight groups? Because you also talked about two groups to provide oversight for the——

Secretary PETERS. Correct.

Senator MURRAY. All right. You said, those panels will consist only of U.S. representatives knowledgeable with this issue. When were those groups established, and who is serving on them? It is, Mr. Scovel, or—who else is on that?

Secretary PETERS. Madame Chairman, we have not yet established the full membership, there are several people that we have talked about putting on that, we want bipartisan representation. We want representation of people who do have knowledge of the issues, both in working with Congress, and working with the various agencies.

So, we will—as soon as we do that, we will get back to you and let you know who those individuals are, but again, we prefer to have benefit of this hearing, and to understand fully any concerns that you might have, before committing specifically to those individuals.

Senator MURRAY. Just so I understand, this pilot project may open up in just a few weeks, and yet, we still haven't established a criteria, or put people on those committees?

Secretary PETERS. Madame Chairman, this pilot project will commence in approximately 60 days. And during that time—and I will ask the Administrator—to detail what other processes have to occur within that approximate 60 days. But before any truck crosses the border on this demonstration program, we will have to you the specific names of those who will be monitoring this process, in addition to those at the SCT in Mexico, and USDOT in America, to include the Inspector General. And, we are looking at some former Members of Congress, we're looking at members of prior administrations, so that we do look at people who have a very good knowledge of these issues, and background on these issues.

But again, Madame Chairman, no truck will cross the border until we have come back to you with those specifics.

And John, if you would please talk about the notice requirements?

Mr. HILL. Thank you, Madame Chairman.

The requirements at this time are for Mexican carriers that are interested in the pilot to apply for operating authority. That authority is provisional, and before we're ever allowed to grant provisional authority, we must go and do an on-site safety audit. That on-site safety audit is something that is required in section 350, and we have inspectors and auditors in place to do that.

Once the inspection, or the audit process, is completed, we then will bring that information back, make an assessment to make sure it complies with the requirements you've established, and what our safety regulations require, and then we will make a posting in our FMCSA register, as we do for all operating authority applications. There will be an opportunity for a comment from the public, and then we will make a decision about whether to grant provisional authority. That is the 60-day period the Secretary was referring to that we believe it will take to complete all of that activity.

Senator MURRAY. Mr. Scovel, you've worked with—in this area for a long time, or your office has. Do you think that the DOT can make a determination on the performance of this pilot project in a year?

Mr. SCOVEL. They may well be able to, Madame Chairman, that is an overarching concern of ours, however. Looking forward over the next year, whatever objectives and measures and milestones the Department might set for itself in evaluating the program, we would need to—need a full opportunity to examine those, and to conduct our own independent and accurate and objective evaluation in order to provide this committee, as well as the Secretary, with the benefit of our recommendations.

I'd like to return to something that the Secretary mentioned in her last answer to one of your questions, Madame Chairman, and it had to do with the role of the Inspector General on the evaluation group that the Department is setting up.

We have, indeed, been asked to participate in that, I have expressed my tentative agreement. I want to make clear, though, to you and to the committee, that one of my concerns is that we remain in an ex officio capacity, if you will. I do not want to com-

promise the ability of my office to perform an independent and objective evaluation of the process. That might, conceivably, occur if we were so involved in the policy formulation concerning how the program is to be evaluated.

Mr. Come, who is sitting with me at the table, may well be our representative on the Department's evaluation group. He brings a wealth of experience to this endeavor. But we know we are going to be called on during the next year, and certainly at the end of the pilot project to render, again——

Senator MURRAY. I'm certain you will.

Mr. SCOVEL [continuing]. An independent and objective assessment. And we will not compromise our ability to do that.

Senator MURRAY. Thank you very much for that response, I appreciate it.

Senator Bond, I will turn to you.

Senator BOND. Thank you very much, Madame Chair, and I share the Chair's concern about ensuring the U.S. trucks have access to Mexico. That's a very important part of the bargain that we want to see kept.

Mr. Scovel, we appreciate the attention and the healthy dose of skepticism the IG brings to this process. You are the first line of help in making sure we oversee this project.

Madame Chairman, might I ask somebody to advise me when 5 minutes is up? I see our timer, our timer has gone kaput. It operates like our elevators in the United States Senate.

Let me get right to the subject: do you think, Madame Secretary, there's a sufficient amount of funding to assure the proper level of enforcement to ensure that Mexican carriers who don't have the appropriate details, and have not gone through the proper channels are not on our roads, outside the commercial zone?

Secretary PETERS. Yes, we do believe that we have sufficient resources, both in terms of funding, and in terms of the auditors and inspectors that are available at the border, dedicated to this provision of the NAFTA treaty.

Senator BOND. Who will enforce the cabotage laws to prevent point-to-point movements of cargo within the United States after the international load has been delivered?

Secretary PETERS. Senator Bond, that's a very important consideration.

Both Federal inspectors, as well as State and local inspectors and law enforcement have been trained, and will enforce the cabotage issues.

Senator BOND. According to the IG, all States have now adopted operating authority rules—I can't imagine all States have come up equally in capability, but what's your assessment of the ability of the States to enforce the safety standards? What obstacles remain in assuring adequate State participation?

Secretary PETERS. Senator Bond, if I may defer to the Administrator on this issue, he can give you the very specifics of our extensive work with chiefs of police and others to ensure that they are trained.

Senator BOND. I don't need the whole document, I would appreciate an overview, and if you can give us—maybe if you have a submission for the record, you might summarize it.

Mr. HILL. Sure, I'd just simply say to you that there are approximately 12,000–13,000 inspectors trained across the Nation to do commercial vehicle inspections. We also are working with the International Association of Chiefs of Police to train local law enforcement and State enforcement that are not regularly doing commercial vehicle enforcement.

Senator BOND. Might I ask also about insurance—do you think the same insurance companies who insure American trucking countries will provide adequate coverage for Mexican carriers? And, are there other insurance companies which might be providing that insurance, if so, how will recovery work in the case that there is an accident in which the Mexican driver is liable? Can that judgment be executed and enforced?

Secretary PETERS. Senator Bond, yes it can.

Each Mexican carrier that is selected to participate in this program will be required to carry insurance from a U.S. insurance company authorized to write that insurance, as well as the same limits that U.S. carriers are required to carry in terms of liability.

We met with one of those companies, Southwest Insurance, when we visited Monterrey, Mexico recently, at the Olympias Trucking Company, and this insurer did indicate to us that they are well-prepared, as are many of his competitors, to write that insurance.

Senator BOND. The Inspector General mentioned there needs to be stated objectives, milestones, measurements of success—that those milestones and indicators are being developed, so they are not yet ready, but will they be ready in 60 days, do I understand that?

Secretary PETERS. Senator Bond, absolutely, yes.

As I indicated to Madame Chairman, there will be no truck cross the Mexico border until that process is in place, and we contemplate doing that during this 60-day period.

PROCESS FOR MEXICAN DRIVERS TAKEN OUT OF SERVICE IN THE UNITED STATES

Senator BOND. Let me ask a practical question—what happens if a Mexican driver tests positive in a post-accident testing scenario in the United States? I know he's taken out-of-service, but if he happens to be in Missouri on our NAFTA corridor I–35, of which we're proud, how do we get him back to Mexico, what happens to the load? As a practical matter, what happens?

Secretary PETERS. Sir, I'm going to speak to the truck first, and then ask the Commissioner to speak specifically to the individual.

As you indicated, that individual driver would be taken out-of-service, as would the vehicle. It would be the responsibility of the carrier to move that cargo, to send a qualified driver to re-locate that cargo, or perhaps a U.S. driver to re-locate that cargo. But again, if I may defer to Commissioner Ahern in terms of what would happen to the individual.

Mr. AHERN. Certainly. If an alien coming to the United States has permission to come into the interior of the United States, whether it's a driver in this process or somebody flying in internationally at an airport and staying in our country for a period of time, if they're out of status in any way and arrested for a violation here in the United States, an immigration detainer is put on their

police record. When they serve time, they are then deported, and put in removal proceedings immediately after.

Depending on the gravity of the charges as placed, the person would be out of status, removed from the United States, and in most circumstances, and we'd have to evaluate each one and certainly on their own set of facts, they would be excludable from readmission.

Senator BOND. One final question, I think I've about run out of time, but I mentioned in this statement that the restriction to the commercial zones, Mexican drayage trucks seem to have been a cause, not only of congestion, but pollution. Are you looking forward to the diminishing of pollution, and what kind of safety impacts will this have on traffic within what has been the commercial zone, in which drayage trucks could operate?

Secretary PETERS. Senator, you're correct, it's been very congested in the border areas with these drayage trucks. We contemplate that there will be fewer drayage trucks used as these drivers are authorized to take their loads onto their ultimate destination.

We also contemplate and believe, based on our discussions with the Mexican officials, and Mexican trucking companies, that these will be better trucks, newer trucks, that also will have less of an ability to provide any kind of air-quality concerns within the border areas.

We have talked to the individuals who will be participating in these, or applying, rather, to participate in these projects, and we are comfortable that we will have an improved situation after.

If I might, Senator, I also wanted to add to—address the concern that we would pick the "cream of the crop," so to speak, just look at the top trucking companies and hand-pick, or cherry-pick those that we felt were the best—that will not be the case. The selection of firms to participate in this pilot will be a broad representation, from size, from geographical diversity, and from other factors, so that we make sure that whatever trucks are involved in the demonstration program would be a good representation of what the universe would be, should we move forward to full implementation.

Senator BOND. Thank you very much, Madame Secretary.

Senator MURRAY. Thank you, Senator Bond.

Senator Lautenberg.

Senator LAUTENBERG. Thanks very much, Madame Chairman, and I appreciate your interest in keeping our roads safe.

In 2005, 43,200 Americans died in traffic crashes, according to the National Highway Transportation Traffic Safety Administration. Five thousand of them were killed in crashes involving a truck.

The Bush administration has made almost no attempt to change that grim picture, and to save American lives with tougher safety laws and regulations. Instead, we've gone in reverse, by letting truck drivers stay on the road for longer periods before they rest, and by proposing to put more trucks on the road, trucks that will be harder to regulate for safety.

The Department of Transportation claims that their new agreement will ensure that Mexican trucks on American roads are as safe as American trucks.

I'm chairman of the Commerce Committee's Subcommittee on Surface Transportation and I want to focus on the question of safety. Our highways are not the place to conduct experiments by allowing potentially unsafe trucks on the road. And we don't know how many hours these truck drivers have been behind the wheel before they cross the border. We don't know whether truck driver drug and alcohol testing in Mexico is adequate. We'll have a hard time confirming whether the truck itself meets the U.S. equipment safety standard.

So, yes, we want to grow our economy, and complete the trade opportunities that exist. But, the safety of our people on American roads must be the first concern.

And so, Madame Secretary, I want to ask you this question. Less than 6 months ago, during your confirmation hearing in the Senate Commerce Committee you said that there were, and I quote you, "No immediate plans for a pilot program involving long-haul trucks from Mexico." Well, there is a conflict between your testimony at your confirmation hearing, and the Department of Transportation's fact sheet. As a matter of fact, the fact sheet from DOT says, "U.S. DOT began working immediately with its Mexican counterparts to develop a NAFTA trucking pilot program." How do we square that?

Secretary PETERS. Senator Lautenberg, thank you for the opportunity to answer that question.

You are correct, that in September, I testified last year, in response to a question by Senator Pryor that there were no immediate plans to open the border. That was the truth.

The Record of Discussion that is dated September 29, 2006, was just that—it was a record of discussions between the then-Fox administration, and the Bush administration. My understanding of that document—of which I was not aware when I testified that day—that it was written before I was confirmed, was created because the two sides had agreed at that point not to proceed with any kind of a pilot or demonstration program.

Once the Calderon administration was in place, we did, then, begin discussions with the Calderon administration about advancing the ability to implement the trucking provisions.

Senator LAUTENBERG. I'm sure there were reasons that you did that, but it's not very comforting to not get the facts out there when you're testifying in front of a committee, and that's what gives us case to pause here, is that we're not sure.

Inspector Scovel, General Scovel—are there driver drug and alcohol testing programs in place for Mexican trucking companies that compare to the programs that we have for, that we demand for U.S. trucking companies?

Mr. SCOVEL. Thank you, Senator Lautenberg, I can address that question, generally.

Mexican motor carriers are required to submit urine samples from their drivers for laboratory testing. It's my understanding that Mexico does not currently have a lab—anywhere in the country—that meets the United States standards, consequently, those specimens are being submitted to a United States lab for testing.

One of our concerns focuses not so much on the laboratory testing, but the collection procedures. From long experience with U.S. military drug prevention and detection efforts, I can say that we

rarely had problems with our testing facilities. We often had problems, however, with our collection processes, and it was there that service members sometimes sought to subvert or to avoid detection by engaging in any number of ingenious schemes.

Without the opportunity for my office to examine carefully the collection procedures that the Mexican Government agreed to in a 1998 memorandum of understanding, would be equivalent to those in the United States, I could not, in good faith, tell this committee that they are, indeed, equivalent.

Senator LAUTENBERG. Yes, and that's the question. We can put in the language what it is that we'd like to see done, but if it isn't done, whatever, wherever the problem exists in the process doesn't matter. The fact of the matter is that the assurance that there are people behind the wheel, equipment that is safe, and the condition of the driver is that which we think is appropriate or necessary for driving a truck in the United States——

Secretary PETERS. Senator Lautenberg, if I may, because that is an issue that we have addressed.

And, the way that we have addressed that issue is that the Mexican Government, the Secretary of Communications and Transportation officials have been trained in the proper control and protocol involving taking and handling specimens, and those specimens will be tested in a U.S.-certified laboratory.

Senator LAUTENBERG. Well, if as the Inspector General said, that the problem is in the collection, it's not easy to guarantee that what you think you have is what you really have. And, so that precedes the question about whether or not we can do the testing properly. I think that's a heck of a lot easier than it is to be assured that what you want to have is available in the form that you can truly test it.

My time is up? Time flies when you're having fun.

Senator MURRAY. We'll have one more round of questioning when we're done with the Senators that are here.

Senator Allard.

Senator ALLARD. Thank you, Madame Chairman.

In 1982, or prior to 1982, Mexican drivers could go anywhere in the United States, and then we imposed the 20/25, I guess in Arizona, the 75-mile limit—what effect did that have on security and safety?

Secretary PETERS. Senator Allard, that had an effect of closing the border, if you will, except within the commercial zone.

But I wanted to address, specifically, the effect that it had on safety—we have not had higher incidents of crime, or issues of violations of safety within the border areas. As you indicated, in Arizona, that border extends to approximately, an area called Rio Rico, where there are a number of produce houses who receive agricultural products from Mexico, and then transfer those to U.S. carriers.

Both my experience as Secretary of Transportation in Arizona, and my experience at U.S. DOT is that there have not been significant safety concerns with the way the procedure has been allowed to happen within the commercial zones. And we have taken additional steps, as have been outlined, to ensure that those trucks are safe, as they proceed under the demonstration program.

DOCUMENTATION FOR ADMISSION INTO THE UNITED STATES AND BIOMETRIC ENROLLMENT

Senator ALLARD. One of the things, I think, we have to be ever-vigilant on is the possibility of terrorists entering this country. How do we go about identification verification? I understand the Mexican government has birth certificates, but they don't have a paper trail like we do, so how do we go about assuring proper identification? Is a biometric system being placed on that?

Secretary PETERS. Senator, that's an excellent question. And we work cooperatively with DHS, and I would like Commissioner Ahern to address that question, since that is under their responsibility.

Mr. AHERN. Thank you very much. I think it is important to restate that for this demonstration project there won't be any changes as far as the introduction and admissibility of individuals who are not citizens or residents of this country.

The three primary documents that an individual would present for admission would be: their passport, a laser visa, or the border crossing card. To be able to go outside the 25- or the 75-mile zone, they have to go in and go through an interview with a customs or border protection officer.

They are then enrolled in the US VISIT system, where we actually do the biometric enrollment, match them biometrically against their identity, and do biographic checks of their name to make sure they're not involved in any watch list or any previous criminal or smuggling history coming across the border. That doesn't change at all during this process; that is something which they keep in place.

Senator ALLARD. The printing office here was under the legislative branch on appropriations when I was chairman, and I think they helped put together the biometric system for visas and whatnot, and it was being applied on a limited basis, and I think was being applied on situations like the border—am I correct on that? And is that working?

Mr. AHERN. It is working very well. One thing I would give you for statistical purposes, is that we capture over 8,000 fugitives coming into this country each year through just biographic checks. Since we've added the biographic feature, we've approached close to 2,000 additional individuals who were coming under different identities. Certainly that biometric check is something that's working very rigorously. It's used all the time in an airport environment, and certainly in a seaport environment. It's used for individuals looking to gain entry beyond that 25- and 75-mile zone in the border area.

One of the things Secretary Chertoff is challenging us to do as we move forward over the next year, is actually move beyond the current finger scans through the biometric US VISIT program, to do full 10-print for people coming into this country, to have even additional security.

Senator ALLARD. That's good news, as far as I'm concerned. I'm glad to hear that it's improved our security, as far as the border's concerned.

LARGE SCALE X-RAY SYSTEMS AND RADIATION PORTAL-MONITORS AT THE BORDER

I've been to the ports, where we have the ships coming in, and we use an X-ray machine to scan the cargo. A car or truck just drives by with the machine, and you can see on a video screen what's in the truck. Do we have a similar system that we're using down on our border for trucks?

Mr. AHERN. I'd be happy to answer that question for you also. First off, the large-scale X-ray systems and gamma imaging systems are things that have been used, beginning in our land border environments. We have, currently, out of our 183 systems, 74 large-scale X-rays, deployed on the Southwest border; and we currently have a 26 percent scanning rate of all trucks coming across the border. That's good news for us.

I think the additional feature that I just want to restate again is, post-9/11, we've also deployed close to 1,000 radiation portal-monitors along our Southwest border, our northern border with Canada, and our Nation's sea ports. Ninety-six percent of the trucks coming across the border will go through a radiation portal-monitor to make sure they're not bringing any radiological or nuclear devices into the country. We're at 89 percent of sea ports, and 91 percent at the northern border; we'll be at 98 percent at all locations by the end of this calendar year.

Senator ALLARD. And through that, if you see a suspicious area in the cargo, what happens?

PROCESS FOR ANOMALIES FOUND BY LARGE SCALE X-RAY SYSTEMS

Mr. AHERN. If we see any kind of an anomaly through the large-scale X-ray, it gets automatically referred for a full inspection until we can resolve what that issue is.

Senator ALLARD. So you unload the truck on the spot?

Mr. AHERN. Absolutely. And if there's any kind of a spectro-read from the radiation spectra, we then follow up through a very elaborate protocol, even reporting it back here to the D.C. area, so our laboratory and scientific services people can resolve the issue, and tell us what type of isotope is causing that radiation portal-monitor to alarm.

METHAMPHETAMINE AT THE BORDER

Senator ALLARD. Now, law enforcement in the State of Colorado tells me that methamphetamine problem has moved from the homelands to large lands just south of the border. What are you doing to check for methamphetamine, are you using dogs, or what?

Mr. AHERN. We are.

As for protecting the borders, we're looking for anomalies and smuggling compartments. To us, it's not a matter of whether it's heroine, cocaine, methamphetamine, marijuana, or a weapon of mass effect or destruction. When we're using the large-scale X-ray, we're looking for anomalies. We're not looking whether it's meth or cocaine. That's the good use of that technology.

There are a couple of programs that we are doing with the Drug Enforcement Administration to actually look at precursors and other transportation movements that help us even focus more spe-

cifically on the methamphetamine. Because we've seen, over the last 2 years, our seizures on the Southwest border, going up exponentially. We're very much focused on that. The dogs still have the same capability to alert to that commodity, as well as the other hard narcotics.

Senator ALLARD. Thank you.

Madame Chairman, I see my time is expired.

Senator MURRAY. Thank you, Senator Allard.

Senator Bennett.

Senator BENNETT. Thank you very much, Madame Chairman.

As I understand it, you have a pilot project that began in February 2007, that will run for 1 year, examining all of the trucks.

Secretary PETERS. Senator Bennett, with a clarification, please.

The 1-year demonstration program will not start until the procedures are in place, to know that we have the monitoring process, the individuals, as well as the safety audits completed in Mexico, at the location of the trucking companies that will be selected to participate.

Senator BENNETT. It was scheduled to begin in February, but it will not begin until everything is place, is that——

Secretary PETERS. Senator, that is correct. And that is something that is very important to clarify.

When Secretary Tellez and I visited the border areas, and announced that we had reached agreement that would allow U.S. inspectors and auditors into Mexico to investigate these firms at the site of their business, we indicated that there were several additional steps that we had to take before the 1-year demonstration program would start. Those were outlined by the Administrator, so yes, sir, the clock does not start on the 1 year until these procedures are in place, and the first truck, if you will, rolls across the border.

Senator BENNETT. Okay, do you have any idea when the clock will start?

Secretary PETERS. We expect, sir, that it will take approximately 60 days.

Senator BENNETT. Okay.

Secretary PETERS. During that 60-day period, we will be doing the selection of the trucking firms, so we have a good representative sample, conducting audits at those trucking firms, and putting into place the monitoring procedures and measurements that we will use to determine whether or not the demonstration program is successful.

Senator BENNETT. Okay, so it will start in about 60 days from now?

Secretary PETERS. That's correct, sir.

Senator BENNETT. Now, outline for me how it's going to work, while you're focusing on the pilot project which, as I understand, will examine every single truck, according to a whole series of specific regulations. At the same time, monitoring that commerce that is coming that is not part of the pilot project. In other words, you're running two systems simultaneously—outline for me how that's going to work. Focusing on the pilot project, and getting the information, setting the parameters for that, and presumably getting the data that will be used for the whole system, after the pilot

project's over, and at the same time, making sure that the rest of the commerce that's coming in independent of the pilot project, goes forward in a logical fashion.

Secretary PETERS. Senator, very good question. We have dedicated inspectors, we also have a specific identifier on all trucks that will be chosen to participate in the demonstration program, so that we can segregate those from the other traffic that is occurring in our border areas.

If I might, I'd like to ask the Administrator to add any additional detail that's important.

Mr. HILL. Senator, thank you. A couple of things, first of all, I think what Mr. Ahern said earlier is applicable, that a lot of trucks are still going through the border every day, and we still have inspectors who are going to be there, looking at those commercial zone vehicles that will be needed to inspected, as we now do.

So, what we anticipate is 100 carriers, we haven't defined the number yet, because as we do the audits, what we're finding is that trucking companies are identifying how many of their vehicles they actually want to dedicate to coming in the United States.

For example, last week we did an audit on one of these companies, and he has 37 power units, but he's only dedicating 5 to the U.S. operation. So, we're going to have to see how large of a vehicle fleet this is. But, we believe that we can dedicate the resources to both—continue the commercial zone activity and these long-haul vehicles without diminishing our safety requirements.

Senator BENNETT. Assuming the pilot project gives you the information that you need to make changes, once it's over, will commercial vehicles be able to go beyond the 25-mile limit, and anywhere in the United States?

Mr. HILL. This demonstration project will allow vehicles to move beyond those limits, and the reason we're doing this with 100 carriers—we want to do it in a very measured way.

Senator BENNETT. Sure.

Mr. HILL. We want to make sure that it's safe. So, there will be careful analysis and discussion, as the Secretary indicated in her earlier remarks, with this independent advisory panel, to make sure that we are assessing safety properly, and we're not diminishing it with the resources that Congress has given us.

Senator BENNETT. Okay, and getting to the result, then, at the end of the year, it's my understanding that the present practice of transferring goods from a Mexican carrier into, to an American carrier, costs the American consumer about $400 million a year, and presumably that savings will occur as these folks can go to the ultimate destination, instead of having to off-load. Is that an accurate understanding of why we're doing this?

Secretary PETERS. Senator, yes, that is an absolutely accurate understanding of why we're doing this.

The current process is costly, it's cumbersome, it's outdated, and as you indicated, it does add additional costs to those goods that are moved. We, of course, will never, ever compromise safety just to implement the trucking provisions of NAFTA, but we believe that we have arrived at a way to test this process, through a demonstration program of 1 year, determine what changes we may

need to make, or how we might strengthen the program further, before full implementation.

Senator BENNETT. Okay, in other words, Madame Chairman, I would expect in this same hearing a year from now, the Department should be prepared to say, "This is what we've learned, and this is what we're prepared to recommend for a long-term policy."

Secretary PETERS. Senator, I would just add one additional step—we will apprise members of this committee, as well as Members of Congress as this demonstration project progresses. So, we're not going to wait until the end of the year to communicate back with you. We will provide you periodic updates as we monitor this process.

And I think the Inspector General added a very important point—we want benefit of their involvement in terms of making sure that we are measuring the right things, looking at the right criteria, but we absolutely must protect their objectivity to be able to audit this process. So, I would defer to the Inspector General about his reporting issues with you, but we will, as the agency, report to you periodically as the demonstration program progresses.

Senator BENNETT. Okay. Thank you very much.

Senator MURRAY. Thank you, Senator Bennett.

Let me follow up on a line of questioning Senator Bennett was talking about, having the two different programs running at the same time, and how are you going to do that.

Mr. Scovel, I'd like you to comment, because in your testimony, you called into question whether or not DOT could fulfill its promise of checking every truck, every time during this pilot project. Could you comment on that?

Mr. SCOVEL. Yes, Senator, that is a concern of ours—screening mechanisms at the border.

Long-haul trucks participating in the pilot program have to be identified for license checks and inspections from among the large number of commercial vehicles entering the United States every day, at each commercial crossing.

The Commissioner mentioned a figure of 5 million commercial vehicles entering the country, each year, from Mexico—the Department has stated that it intends to check every truck, every time, from among those participating in the pilot program. But, if we have 5 million a year, the ability of FMCSA inspectors, or State inspectors who may be on the ground at the border crossing point, to identify, single out, segregate, and then inspect every participant in the pilot program, will be sorely tested. It will require very close coordination with agents from Customs and Border Patrol. That will require inter-agency agreements, sometimes those can be difficult to obtain, to negotiate—it will certainly be a watch item for my auditors as we go South to inspect the process and the promise of every truck, every time.

Senator MURRAY. Secretary Peters, have you initiated a process to put in place those inter-agency agreements that are necessary?

Secretary PETERS. Madame Chairman, I'm going to defer to the Administrator in terms of the specific agreements, but I do know, as I visited the border and observed the traffic that goes along across the border in three locations just 2 weeks ago, we did talk specifically with the others who jointly perform operations with us,

at our border stations, that the identifier that we have on the truck will allow us to pull that truck out of line, and that driver out of line, so that we can conduct this every truck, every time process.

John, if you would, please address the agreements?

Mr. HILL. Madame Chairman, to answer your specific question, the agreements are not in place, however, we are working with DHS, as we have been for over 2 years, to develop the International Trade Data System, ITDS, as referenced by the Commissioner, and we are a pilot, we're the first agency in the Federal Government to test that pilot, so we are committed to doing that, which will give us advance notice of the vehicles coming into the country.

But, in a practical sense, we're going to have to have someone positioned in place, at these locations, to observe these vehicles.

Senator MURRAY. So there's a pilot in the pilot?

Mr. HILL. No.

Senator MURRAY. Okay.

Mr. HILL. You're talking about the ITDS? No, that's been ongoing for 2 to 3 years.

Senator MURRAY. You called it a pilot project.

Mr. HILL. Well, the first phase of it was, yes, I did.

The pre-clearance is something that we're doing with DHS to make sure that we have the automated information in the system, so that when DHS reads the screen, we actually know whether or not that carrier is one of the carriers that's been identified as part of the demonstration project.

Senator MURRAY. Well, if it makes sense for DOT to check every truck, every time during the pilot project, covering the best—as you said—the best Mexican carriers, why would it make sense to conduct less frequent inspections when the border's open to all eligible Mexican applicants after this project is over?

Mr. HILL. We are, as you mentioned in your earlier remarks about section 350, the requirement there was for us to check 50 percent, and we believe for determining the efficacy of safety protocols at the border, that we believe that we should go beyond that for these 100 carriers. And so, we are committed to doing that for this demonstration project.

Senator MURRAY. What happens after the demonstration project?

Mr. HILL. Well, we're going to have to see what the evaluation of the program takes place, and see what kind of recommendations are made to us. But, we fully are committed to meeting the requirements that you've established on this committee in terms of the 50 percent, and even exceeding that for verification.

Senator MURRAY. The pilot project you're saying, every truck, every time, we'll look at that for 1 year, and then all of a sudden, we're going to open it up to everybody, without every truck, every time.

Secretary PETERS. Madame Chairman, you raise an important point. We want to do 100 percent inspection during this demonstration period so that we know what the data looks like. We will evaluate that data and determine, should we go to full implementation later, how many of these trucks we will need to investigate, it may well be that we come back and say we need to look at all

of them, but it may not. That's the data that the demonstration program will help us arrive at.

Senator MURRAY. Mr. Scovel, can you share with us—I'm a little worried about the fact that only the best Mexican carriers are going to be in this pilot project. There were 800, I think we—you said you are going to select 100 of those. Some of them are going to be de-selected because of, maybe, a prior safety evaluation, or whatever—how can we evaluate a pilot project if we're not looking at across the board, which is what we will have, apparently, 1 year from now?

Mr. SCOVEL. Senator, that will be a point that we'll have to raise in our audit, and in our report of the pilot program.

I'll—I don't want to pre-judge the results of what our audit may reveal. But, it certainly may be a point worth considering, it may be a point that, for instance, our statisticians on my staff will take into account when they evaluate the fidelity, if you will, of the ground rules that the Department has laid out for its pilot program.

Senator MURRAY. Okay, let me ask one other question and I'll turn to Senator Bond. I do have a number of questions I will submit for the record, and I would like each one of you to make sure you respond to those in a timely manner.

But, Mr. Scovel, I wanted to ask you—in prior IG audits, your office observed that not all of the States had the necessary laws, and data, and training, or even the desire to enforce Federal rules when it came to requirements for trucks to have Federal operating authority. Secretary Peters claimed that all of the States are now ready to enforce the Federal operating authority rule, and yet, in your own agency's budget documents, you say that your Department has a strategic goal to get 25 States to fully enforce these rules in 2007, and 30 States in 2008—which, are 50 States fully informed, equipped, trained, and ready to enforce the Federal rules today? Or is it 25?

Mr. SCOVEL. Senator, I don't have the exact number, my staff tells me that all States are equipped at the current time, are ready to enforce operating authority rules. However, the audit work in preparation for our current report, indicated through anecdotal evidence from officials in three States, that they had essentially communication problems in determining whether—they anticipated communication problems in determining whether a particular truck was indeed, had indeed, correct operating authority.

They pointed out to us that their law enforcement vehicles, some of them don't have internet capability, and that's one method for law enforcement on the side of the road to check a vehicle's operating authority. An official in another State pointed out that their law enforcement vehicles do not have telephones, they rely on radios, and some of their law enforcement officers don't even have cell phones, with which to call FMCSA's toll-free number, which is an alternative method to the internet to determine a vehicle's operating authority.

Those are practical problems, of course, communication problems. In our report, on our current audit, we will recommend to FMCSA that it continue thorough training of officials in every State to en-

able them to determine a Mexican-domiciled motor carrier's operating authority.

Senator MURRAY. Secretary Peters, do you want to comment?

Secretary PETERS. Yes, Madame Chairman, based on the recommendations that we received from the Auditor General in the last report, we have taken extensive steps to ensure that we are communicating well, and have trained local law enforcement officers.

I'd like to defer to Administrator Hill to give you the specifics of that, and just as a reminder, Administrator Hill's background is, he was one of those officers, in the State of Indiana, prior to joining Federal Motor Carriers. So, perhaps he can give you both what has happened, as well as his personal experience.

Mr. HILL. Madame Chairman, thank you for the question. There are two things, I think, that need to be pointed out.

First of all, the Commercial Vehicle Safety Alliance, which is the group that has the safety regime that all three countries—Mexico, Canada and the United States—follow for the inspection process, develops the out-of-service criteria. A very important development is that they added that to their out-of-service criteria in the last year, so, when a vehicle now is found to be operating out of authority, they can be placed out-of-service at that time.

The second thing I would say to the Inspector General is that when we do have these communication issues that come up, but every police officer is out there, has a police radio. And they call their dispatch, and dispatch, then, can call the 800 number, or our telephone number, and verify out-of-service, or I'm sorry, or operating authority status with our agency. So, we've tried to put in place, remedies for those people who don't have internet-access capability at the roadside, and also who do not have cell phones.

Senator MURRAY. Okay, I'm confused, Madame Secretary, because your strategic goal is to have 25 States to have Federal—who are ready to enforce Federal operating authority. If only half of the States are ready, how is this going to work?

Secretary PETERS. Madame Chairman, my understanding is that the States are ready, not just half of the States. I will ask the Administrator to speak specifically to the budget issue.

Senator MURRAY. Yeah, your budget states 25 States.

Mr. HILL. Okay, is this—I don't have that in front of me, but are you talking about operating authority, or the PRISM program that, putting vehicles, putting companies out-of-service?

Senator MURRAY. We are talking about the PRISM program.

Mr. HILL. Okay, the PRISM program is a different set of circumstances. That is, when we find safety-related defects, the States can, under their authority, place the carrier out-of-service for noncompliance with our safety regulations. It's a different program than the operating out-of-service, that every motor carrier is required to follow when they're operating on the highway.

Secretary PETERS. Madame Chairman, if I could add, also, we have the same process in place, and has been operating with Canada for some time now. So that, what we have learned there is that we do have these communication capabilities with the law enforcement personnel.

Senator MURRAY. All right, well. You know, we have to make sure that the conditions of section 350 are met. And, if only half of the States are capable of enforcing it, it makes an issue for us, so—

Senator MURRAY. I will have more questions on this topic, and others, that I will have you answer and submit for the record, and turn it to the Senator Bond for any final questions.

Senator BOND. Thank you, Madame Chair, just one quick question that I think we ought to clear up here, and I want to save the rest of my questions for the record, because I do want to hear the second panel.

But, Secretary Peters, you mentioned—you added a comment in the answer to one of my questions about the "cream of the crop," and you said this is not a cream of the crop, how are you going to assure that you get a representative sample? Because I think—if it is, if it's just the best of the best, that doesn't tell us what the rest of the West would be, if we let them all in. How do you assure that you're getting, truly, a representative sample?

Secretary PETERS. Senator, it's a very good question, and it is absolutely our intent to have this be a substantive pilot, that looks at a representation of the—all of the potential trucks that could be involved in cross-border trucking. To do that, we will work with the Mexican officials to look at the entire universe of trucking companies, those that would potentially participate in cross-border trucking, and ensure that our 100 firms selected are representative of the whole.

Senator BOND. How do you know they won't steer you to their best, their best stars? Have we got good intelligence to know who's been naughty, and who's been nice?

Secretary PETERS. We do. John, please.

Mr. HILL. One of the things that we're finding already, Senator, is we're sending down—because of State Department requirements to give advance notice before our inspectors go into the country—we give them notice that we're coming, and we arrange for the carriers to be aware that we're en route.

We've already sent down 16 carrier names, and we're already noticing self-selecting occurring. Four of the carriers have already dropped out for various reasons. We're going to be looking into why they're dropping out—is it because of the safety concerns, that they don't want to fulfill the requirement, or is it because they've got a different operation now, that is not really conducive to long-haul—so we're going to be making that assessment.

The answer to your question is, we have been having these applications on hold for a number of years. So, we're now just going back through, vetting the names in order of what we got them, and making sure that we have information that is current, and then we'll find out whether the carriers are still wanting to participate.

Senator BOND. Thank you very much.

Thank you, Madame Chair.

Senator MURRAY. Thank you very much to all of the panelists on the first panel. We appreciate your time today.

And we are now going to turn to our second panelists, if they would join us at the table. We will make a quick transition, I will

introduce them in the order that they are going to speak as we are making this transition.

We have James Worthington, who is President of Con-way Freight-Southern on behalf of the American Trucking Association. We have Mr. James Hoffa, who is the General President of the International Brotherhood of Teamsters. We have Mr. John Ficker, who is President of the National Industrial Transportation league. Mr. Charles Parfrey, Member of the Board of Directors of the Owner Operator Independent Drivers Association. And Ms. Joan Claybrook, who is President of Public Citizen.

We will be starting with James Worthington, and as they make their transition up here, we will pause for just a minute to let that happen.

Again, I'd like to thank all of the witnesses of the second panel for being here with us today. If we could have the rest of the hearing room silent, so we can begin this. We've had a long hearing so far, we want to give everybody a chance to give their testimony today.

I would like all of our witnesses to know that we have an unfortunate clock problem here today, so I'm going to have to be sort of rude, and give you a 1-minute verbal warning as you give your testimony. We do want everyone to keep to 5 minutes, because there are five of you, and we have—I want to make sure we have time for a few questions afterwards as well, and the morning is moving along.

I want each of you to know that your testimony that has been given to this committee will be submitted in the record, and all members will receive it. So, please excuse me if I appear rude when I give you a 1-minute verbal signal, but we will have to do that today.

Mr. Worthington, we are going to begin with you if you would like to open with your remarks.

STATEMENT OF JAMES P. (PHIL) WORTHINGTON, PRESIDENT, CON-WAY FREIGHT-SOUTHERN, ON BEHALF OF THE AMERICAN TRUCKING ASSOCIATION, ALEXANDRIA, VIRGINIA

Mr. WORTHINGTON. Good morning, Madame Chairman, members of the committee. My name is Phil Worthington, I'm President of Con-way Freight-Southern, a regional less than truckload carrier with operations in 12 Southern States, Puerto Rico and Mexico.

Con-way Freight-Southern is a division of Con-way, a market leader in the supply chain management industry. My comments today are also on behalf of the American Trucking Association.

This morning, I would like to talk about an issue of great importance to the overall success of NAFTA, which is the development of an efficient and safe trucking system that meets the transportation needs of our expanding trade relationships.

Specifically, I'll talk about three things: what NAFTA means to trucking, what impact NAFTA's trucking provisions have, and what is allowed, and what is not allowed, under NAFTA.

ATA supports NAFTA, because NAFTA has resulted in increased trade flows among Canada, Mexico, and the United States. This growth in trade has generated more business for the trucking industry. When measured by value, trucks move 80 percent of the U.S.-Mexican trade, and move 65 percent of the U.S.-Canada trade.

Today, there are roughly 14 million truck crossings on the U.S.-Canadian border, and about 9 million truck crossings on the U.S.-Mexican border. In order to better understand why NAFTA is good for trucking, it's important to look at a snapshot of trucking at the border today.

NAFTA's access provisions for trucking have delayed, for now almost 12 years. Since NAFTA was signed and ratified, U.S.-Mexican trade has grown by 400 percent. In other words, though trade has grown significantly between our two countries, we continue to have a cumbersome, cross-border trucking process in place along our border.

Through inter-line relationships, freight is handled on the U.S. side by a U.S. carrier, on the Mexican side by a Mexican carrier, with a middle man, or drayage carrier, hauling loads back and forth across the border to freight yards, or for subsequent, final delivery.

This results in one shipment requiring at least three drivers, and at least three tractors to perform a single, international freight movement. This process also involves freight forwarders, custom brokers, as well as the official processing handled by government inspectors and enforcement officials.

According to a recent estimate by the U.S. Department of Transportation, this cross-border drayage process increased costs by roughly $400 million annually, without including other related costs.

NAFTA ultimately should facilitate the movement of freight across the U.S.-Mexican border, by allowing a U.S.-Canadian or Mexican carrier to transport freight from one point of origin to another point on international shipments.

Cross-border operations will not change overnight, once NAFTA's trucking provisions are implemented. NAFTA is just one piece of the puzzle, in improving the efficiency at the border. Other business practices, clearance procedures, and efficiency issues must also be improved.

It's important to note that NAFTA allows four motor carriers to transport international cargo. That is cargo which either has an international origin, or an international destination. NAFTA does not allow foreign motor carriers to transport domestic freight. Again, domestic freight is off-limits to Mexican motor carriers.

Another important requirement is that a foreign carrier operating in the United States must comply with all of the regulations and requirements that apply to U.S. carriers. We support this 100 percent. As it relates to the pilot—there are two issues that ATA and its members are following closely.

Senator MURRAY. You have 1 minute.

Mr. WORTHINGTON. First, we expect an opportunity soon to review the Mexican government's final application process. Second, we have expressed concern about the pilot's 6-month long lag time. We are seeking more information on both issues.

PREPARED STATEMENT

To conclude, our expectation is that once the trucking provisions are implemented, over time we will begin to recognize the full benefits of increased trade amongst the NAFTA partners. With the

pilot in place, we can focus our efforts on the many business and very practical issues that will arise from cross-border integration.

Thank you for your attention.

[The statement follows:]

PREPARED STATEMENT OF JAMES P. (PHIL) WORTHINGTON

INTRODUCTION

Con-way Freight-Southern Inc. is part of the North American network of less-than-truckload (LTL) operations of Con-way, Inc. a market leader in the supply chain management industry. Con-way's principal component companies—Con-way Transportation Services, Menlo Worldwide and Road Systems, operate in regional trucking, ground expedite, truckload brokerage, air freight forwarding, regional asset based truckload, global logistics management, e-commerce fulfillment and trailer manufacturing.

The Con-way name has been in the market for over 20 years, provides transportation services to some 400,000 customers, has over 440 North American service centers, and employs over 20,000 people. Con-way Freight Southern provides LTL freight services in 12 States in the southern United States, Puerto Rico, and Mexico.

Con-way, Inc. is a member of American Trucking Associations, Inc. (ATA). These comments are made on behalf of ATA. With offices located at 2200 Mill Road, Alexandria, Virginia 22314–4677, ATA is the national trade association of the trucking industry. Through its affiliated trucking associations, and their over 30,000 motor carrier members, affiliated conferences, and other organizations, ATA represents every type and class of motor carrier in the country.

BACKGROUND

The U.S. trucking industry has long viewed free trade as an important tool in improving our country's economic growth. Because of the North American Free Trade Agreement (NAFTA), trade between the United States and Mexico has grown by more than 400 percent from $81 billion in 1993 to $336 billion in 2006. During the same period, trade with Canada has grown from $211 billion to $536 billion.[1]

Motor carriers play a critical role in the success of NAFTA. In 2006, trucks transported $219.4 billion worth of goods, representing over 80 percent of the value of U.S.-Mexico surface trade. Trucks transported $314.2 billion worth of goods, or roughly 65 percent of U.S.-Canada surface trade by value.[2] Trucking companies have benefited from the growing trade volumes among the NAFTA partners, considering that higher trade flows have resulted in more business for motor carriers in all three nations.

Based on these facts, ATA policy supports the implementation of the trucking provisions established under the North American Free Trade Agreement (NAFTA), both in the areas of investment and cross-border access.

However, motor carries have not had an opportunity to seize NAFTA's full promise of improved transportation efficiencies to handle the increasing trade flows. Today, a shipment traveling from the United States to Mexico, or vice-versa, requires no less than three drivers and three tractors to perform a single international freight movement. Through interline partnerships, freight is handled on the U.S. side by a U.S. carrier and on the Mexican side by a Mexican carrier, with a "drayage" truck transporting trailers and freight across the border. The drayage truck ferries loads back and forth across the border to warehouses or freight yards for pickup or subsequent final delivery.

In addition to requiring two long-haul carriers and the drayage carrier, the process includes freight forwarders, customs brokers, as well as the processing by government inspectors and enforcement officials. This process results in extra trucks on the road, congestion, delays and "over handling" of shipments which invariably leads to increased costs. The U.S. Department of Transportation (USDOT) recently estimated that the present drayage system results in $400 million in additional costs. ATA surmises that this figure was reached by multiplying the number of truck crossings taking place on the southern border by an estimated $100 dollar fee for the drayage operation. If this is correct, there are additional costs related to warehousing, delays, and other harder to quantify costs that were not likely included in that $400 million figure.

[1] Source: International Trade Administration, U.S. Department of Commerce.

[2] Source: Bureau of Transportation Statistics, U.S. Department of Transportation.

The NAFTA trucking provisions were negotiated and established to eliminate this cumbersome and costly process for transporting cargo and trailers across the U.S. Mexico border, and establish a more seamless process such as we already have on the U.S.-Canada border.

IMPLEMENTATION OF NAFTA PILOT

In general terms, ATA supports the pilot program announced by Secretary Mary Peters and her Mexican counterpart, Secretary Luis Tellez, to begin the process to allow motor carriers from both sides of the border to apply for operating authority to move cargo directly across the border. ATA believes that the USDOT has established a strong array of safety procedures to ensure that Mexican motor carriers operating under this pilot, and potentially beyond, are in compliance with all applicable U.S. regulatory requirements. This process and its capabilities has been verified by the USDOT Inspector General and certified by the Secretary of Transportation. These steps, mandated by Congress in 2001, include an array of documentation, inspections, certifications and audits that go well beyond any such requirements imposed on new entries into the U.S. trucking industry or of Canadian motor carries operating in the United States.

ATA fully supports rigorous enforcement of all U.S. standards for all carriers operating in this country, be they U.S.- or foreign-based motor carriers. For the pilot, only Mexican carriers who successfully apply with USDOT, pass a comprehensive safety audit and demonstrate compliance with U.S. standards will be given temporary U.S. operating authority. Once they have successfully operated under their temporary authority, and had their vehicles inspected and drivers assessed every time they cross the border, Mexican motor carriers must successfully undergo and pass a safety compliance review to gain permanent operating authority.

ATA believes that the process mandated by Congress, and as implemented by USDOT, will succeed in ensuring compliance by Mexican motor carriers with U.S. requirements.

However, there are 2 concerns that ATA and its members have expressed in regards to the pilot program as announced on February 23:

—ATA is unaware if Mexico's Secretaria de Comunicaciones y Transportes (SCT) has finalized an application form for U.S. motor carries to apply for operating authority to begin cross-border operations into Mexico; and,

—ATA does not support the need for a 6-month delay in implementing the pilot for U.S. motor carriers interested in operating into Mexico.

It is essential that SCT finalize and make available the application form and process for U.S. carriers to apply for operating authority in Mexico for cross-border operations, and that this form and process be clear and transparent.

In relation to the 6-month delay, ATA believes that this interval should be eliminated so that U.S. motor carriers can process the application form with SCT and begin cross-border operations into Mexico at the same time as Mexican motor carriers begin to cross the border into the United States.

CONCLUSION

Implementation of NAFTA's trucking provisions will eliminate a cumbersome, outdated and costly system of moving freight across the border, and replace it with an efficient, transparent and safe cross-border trucking process. ATA does not expect the full implementation of NAFTA's trucking provisions to bring about revolutionary changes overnight in cross-border trucking operations. This change will be an evolutionary process, taking time for trucking companies and their customers to structure their operations in light of the new process. The NAFTA provisions are but a single component in the cross-border process that involves many other parties, such as freight forwarders, customs brokers, and government procedures and inspections that play a critical role in the transportation of cargo across the U.S.-Mexico border.

ATA strongly believes that motor carriers operating in the United States, no matter what their nationality, must abide by U.S. safety standards. ATA is concerned that attacks on our Mexican counterparts are based on an incomplete understanding of motor carrier safety and prejudice towards Mexican carriers, instead of being based on hard facts related to safety. More importantly, ATA is also concerned with U.S. motor carriers being afforded a reasonable and transparent process by SCT to begin cross-border operations into Mexico. This process should be initiated on the same timeline as announced on February 23 for Mexican motor carriers.

ATA is committed to ensuring that cross-border trucking operations remain on a level playing field and that all motor carriers, notwithstanding their national origin, abide by all U.S. standards and requirements mandated for U.S. motor carriers. The bottom line is that every trucking company, every truck and every driver entering

the United States will be required to meet each and every U.S. safety requirement only after undergoing a comprehensive review of their ability to meet those standards.

In addition, it is essential to recognize and remember that NAFTA's access trucking provisions allow only for the transportation of international cargo by Mexican motor carriers operating in the United States. The transportation of domestic cargo is strictly prohibited.

Once NAFTA's trucking provisions are fully implemented, our countries can begin to recognize the full benefits of NAFTA and increased trade between the United States and Mexico. Then, we can focus our efforts on the many business and practical issues that will arise from the cross-border integration process, which can only be tackled with the goodwill of committed trading partners.

Senator MURRAY. Thank you, Mr. Worthington.

Mr. Hoffa.

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

Mr. HOFFA. Madame Chairperson, Senator Bond, it's great to be here, and thank you for your invitation to speak, and give us our views.

My name is Jim Hoffa, and I am General President of the International Brotherhood of Teamsters. Today, I appear before you on behalf of the 3 million members of the Teamsters Union, their families, and retirees.

More than 600,000 of our members earn their living every day working on the American highways. Like every working American, they deserve safe American highways.

First, I would be remiss if I didn't say thank you, to you and Senator Shelby for the great job that you did in 2001 when you passed the Murray-Shelby bill, because you pointed out all of the deficiencies with regard to the rush to judgment that happened back then to stop unsafe conditions, and identify unsafe conditions that existed between Mexico and the United States.

I'm alarmed that the DOT is moving forward with this dangerous pilot program that leaves so many questions unanswered. I have outlined my questions and concern in my written testimony, which I would like to have be part of the record.

I would like to point out that the Bush administration, I believe, is playing Russian Roulette with our national highway safety, and national security. The DOT does not really know what's going on with the thousands of trucks that are coming across the border. It's been identified that there are 5 million trucks, in the testimony today, crossing the border. We know that very, very few of those are ever inspected. And now they want us to believe that they're going to inspect, you know, maybe 1,000 trucks that are going to come across the border.

The Mexican government has had 15 years under NAFTA to address the issue of truck safety, and they have failed miserably. The have had 15 years to implement a computer system, which they still don't have. They have had 15 years to create driver training and safety programs, and they have not done that, in 15 years. They have had 15 years to create a driver protocol for drug testing and physicals, and we heard today that after 15 years, there isn't one lab in Mexico that can do the testing for drugs. I think that's just absolutely amazing.

Mexican drivers are underpaid, untrained and overworked. They are often forced to work, and drive, 24 hours at a time without sleep. This is not the fault of the Mexican worker. The sole responsibility for meeting the standards required by NAFTA and Murray-Shelby, lie with the Mexican and U.S. governments.

I'd like to tell the subcommittee what the Teamsters have learned about Mexican trucking. I provided, in earlier testimony, a copy of an investigative report that we commissioned when we had reporters go down to Mexico. I want to have that made part of the record.

This is a story by investigative reporter, Charles Bowden who, in 1999, wrote a similar story about spending several weeks with Mexican truck drivers. In 1999, he told of exploited, exhausted Mexican truck drivers, pushed to the limit by their employer. And guess what? Seven years later, he found that nothing had changed.

Let me read a few excerpts from the truckers, and what the interviews he did with many of the Mexican truckers. "The longest distance I drive," said one driver, "Is from Encenada to Cancun, 2,700 miles, 5 days and 6 nights. The company won't pay for 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 long runs without cocaine and crystal meth, and then they use marijuana to come down from the high.

One driver said, "We make almost nothing. We make less than $300 a week. We work 48 hours, non-stop, and drive 1,500 miles per trip, without a turnaround." According to Bowden, the drivers agree that the biggest problem in Mexico is the Mexican police. One driver said, "If you drive to Mexico City, you're robbed, and you're robbed by the police."

These drivers are victims of a system that the United States will depend on to enforce drug and alcohol testing.

Senator MURRAY. You have 1 minute remaining.

Mr. HOFFA. And hours of service regulation, in this so-called pilot program. What kind of confidence can we have in such a program?

And, we don't really know who these drivers are—isn't it amazing that after 15 years, they don't have a computer system? And, we're also worried about the fact that they really don't need passports. If you and I want to go to Mexico, we have to carry a passport, if you want to go to Acapulco. Guess what? When they come over here, they just show a CDL, and we know you can get a CDL, they're a dime a dozen, anywhere you go in Mexico.

And how will these drivers be tracked, once they're in the United States? If we don't have a computer system, how do we know who they are? How do we know what their record is? How do we know how many wrecks they have? Were they arrested for drunk driving? Did they have a fatal accident? There's absolutely no record with regard to who these people are, when they come over across the border, and yet they say, "Trust us."

I don't think we should trust the administration with regard to the representations that we've heard here today.

PREPARED STATEMENT

And, isn't it amazing that we remember, a short time ago, when Secretary Mineta said, "Everything is fine on the border." The Inspector General went down there in 2005 from the DOT, and he found out that nothing was right, and that the Mexican trucks do not meet our standards. That was in 2005. Now they say, 2 years later, "Everything's fixed." Well, that's really amazing.

Senator MURRAY. Mr. Hoffa, unfortunately your time has expired, but we will, we do have your testimony, and we'll have an opportunity to ask questions as well.

Mr. HOFFA. Okay.

[The statement follows:]

PREPARED STATEMENT OF JAMES P. HOFFA

Madam Chairwoman, Ranking Member Bond, 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. However, before I do that, I would be remiss, Madam Chairwoman and Senator Shelby, if I did not take a minute to thank you both publicly for your work in passing the Murray-Shelby safety provisions back in 2001 that put the spotlight on the lack of safety measures on both sides of the border that existed at the time. I realize that some progress has been made in the requirements outlined in your legislation, 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, "USDOT 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 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 (Public Law 107–87), whether there is statutory authority to actually initiate a pilot program for Mexican trucks, and whether this is indeed a true pilot program. 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 Briefing to Congressional Staff on Audit Work Regarding Implementation of the North American Free Trade Agreement's NAFTA Cross Border Trucking Provisions (March 1, 2007) by the IG cites 2 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 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, whether they be large or small, to slant the data on violations, crashes and other compliance issues and proclaim the program successful, wherein, it will announce a full blown opening of the border at the end of the 1-year period. What criteria will be used to disqualify a carrier from the program? 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'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 United States nor the Mexican governments have the resources to carry out an aggressive oversight and enforcement program. 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. Madam Chairwoman, 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, 7 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, 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.' 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.'

"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 United States, 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 8 days of work. Apparently there is a general prohibition against working more than 8 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 8 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.

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. 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 1 year to 5 years. Can we be assured that this is the type of program that the Mexican DOT will implement?

What happens to a Mexican driver who may test positive in a post-accident testing scenario in the United States? 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 United States for an extended period of time, but is selected for random drug testing? How will a driver be notified in the United States? 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 United States and Mexico concerning the medical qualifications for drivers, although such an agreement exists between the United States and Canada. While the United States 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 its recent congressional briefing on 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 United States.

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 United States, 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?

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. What assurances do we have that trailers carrying hazmat will be stopped inside the commercial zones?

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 United States are screened by U.S. Customs and Border Protection Officers, which could include radiation portal monitoring and X-ray inspections of high risk cargo". What does "could," mean in terms of the frequency rate of monitoring for radiation and X-ray inspections? What does it mean that drivers must meet immigration entry requirements? 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. 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.

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?

Madam Chairwoman and members of the subcommittee, I have asked a lot of questions in my testimony and raised a number of issues 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.

ATTACHMENT.—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.

"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 2 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 United States 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 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 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 who 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 5 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 5 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.

FIGHTING FOR SAFE BORDERS

The Teamsters Union continues to be the major advocate supporting regulatory action and legislative initiatives 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 zones.

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 swarmed to Capitol Hill promising job growth and an economic boon for U.S. workers. However, more than a decade of statistics has proven what the Teamsters and other opponents said 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. has lost 3 million jobs in manufacturing alone since its passage—one in six jobs in that sector. According to the government's own program to track workers who lose their jobs as a direct result of NAFTA, more than a half million Americans were put out of work specifically due to that trade deal.

Trade Deficit

Flowery predictions about increased trade surpluses for the United States have also wilted over time. NAFTA supporters claimed that the deal would create a $9 billion trade surplus with Mexico within 2 years. However, the United States actually built a $15 billion trade deficit with Mexico in that time period—a figure that has more than doubled in ensuing years.

"If there's a positive side to the disastrous legacy of NAFTA, it's that it has made it a little harder for the free trade cabal to wrap their lies around subsequent job-killing deals," said Jim Hoffa, Teamsters General 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 member of Congress."

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.

Senator MURRAY. But thank you very much. Appreciate it.

Mr. HOFFA. Thank you.

Senator MURRAY. Mr. Ficker.

STATEMENT OF JOHN B. FICKER, PRESIDENT AND CEO, NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE, ARLINGTON, VIRGINIA

Mr. FICKER. Good morning, Madame Chairman, Senator Bond, it's a pleasure to be here this morning, I appreciate the opportunity to testify.

My name is John Ficker, and I currently have the opportunity, and privilege of serving as President and CEO of the National Industrial Transportation League. I've served in this position since September 2003, and in total, I spent 36 years in transportation industry, and have worked for both carriers and shippers, and I've worked with carriers in the United States, Canada and Mexico.

Prior to my current position, I was employed in your State, home State, the Weyerhaeuser Company at Feder Way for 17 years. I appreciate the opportunity to be here this morning.

Just a brief background on the National Industrial Transportation League. We are a 100-year-old freight association that's been representing those who move commerce in this country and around

the world, since 1907. Our 600-plus members range from some of the largest companies in the United States, to many of the smaller enterprises. Our members are the primary companies that move the products throughout our country's transportation system, and are engaged in the movement of goods, both domestically and internationally.

League members ship their products by all modes of transportation—air, ocean, domestic waterways, rail and highway. Many League members have active movements between the United States and Mexico. Additionally, League members are concerned about the growing volumes of freight to be moved, and the adequate capacity to move those goods to meet the needs of our economy.

This morning I'd like to make several points, and move on for questions at a later point. As we all know, the United States has a significant trade with Mexico—estimates range up to $200 billion a day, and the safe and efficient movement of this commerce is essential to the growing economies of both of our countries.

The United States is a party to the North American Free Trade Agreement, and we should honor the commitments made in that agreement, including transportation. It's projected by a number of groups, including the American Association of State Highway and Transportation Officials, as well as the American Trucking Association and DOT, that freight volumes will as much as double in the next two decades.

Much of this growth will be imported goods, both from offshore and Mexico. Meeting this need will require a significant growth in our current transportation industry. Effectively utilizing transportation assets of both countries will be a component of meeting those projected growth.

The current system of trans-loading trucks, as has been talked about several times this morning, at the border, is both inefficient, uneconomical for all parties. This proposed pilot will be an important step toward improvement in these important supply chains, by eliminating outdated processes.

According to the Department of Transportation and the Inspector General the Department has met the needs mandated by Congress to allow safe Mexican trucking companies access to the United States markets. These requirements are as stringent as those applied to U.S. trucking companies.

I'm pleased to also hear this morning, the partnership between DHS Customs and Border Protection, and DOT, as a method to ensure not only the safety, but the security of the trucks that would be entering the United States.

I have personally had the opportunity to meet with and negotiate with several Mexican truckers while I was in a previous position, and I can attest to you personally, that the companies that I met with were as safe and as professional as any American company that I've dealt with.

PREPARED STATEMENT

Finally, we believe that the proposed pilot is in the best interest of ensuring safe and efficient transportation system to meet the projected growth of freight movements in our country, and in North

America in general, and it should be allowed to proceed and go forward. There is nothing more important to the business community that I have the opportunity to work with then safety. It is No. 1, will always be No. 1, it is good business, and makes good sense.

Thank you for the opportunity to testify this morning, and I look forward to you questions.

[The statement follows:]

PREPARED STATEMENT OF JOHN B. FICKER

The National Industrial Transportation League is pleased to have been invited to present testimony on cross-border trucking with Mexico. The League, which is celebrating its 100th anniversary this year, is the Nation's oldest and largest association of companies interested in transportation. Its 600+ members range from some of the largest companies in the Nation to much smaller enterprises. Our members are primarily companies that move their products through our country's transportation network and are engaged in the movement of goods both domestically and internationally. League members ship their products via all modes of transportation including air, ocean, domestic waterways rail and highway. Many League members have active movements between the United States and Mexico. Additionally, League members also are concerned with the issue of dealing with growing volumes of freight to be moved and having adequate capacity to move those goods to meet the needs of our economy.

My name is John B. Ficker and I currently serve as President and CEO of The National Industrial Transportation League. I have served in this capacity since September 2003. In total, I have over 36 years experience in the freight transportation industry having worked for both carriers and shippers. Prior to my current position, I was employed by Weyerhaeuser Company in Federal Way, Washington. I appreciate the opportunity to share our views on the subject of Mexican trucking companies being allowed limited operations in the United States.

I would like to make several important points:

—The United States has very significant trade with Mexico—estimates range up to $2 billion per day. The safe and efficient movement of this commerce is essential to the growing economies of both countries.

—The United States is a party to the North American Free Trade Agreement and we should honor the commitments made in that agreement including transportation.

—It is projected that U.S. freight volumes will experience up to 100 percent growth over the next 2 decades. Much of this growth will be in imported goods both from off shore and from Mexico. Meeting this need will require significant growth in the current transportation industry. Effectively utilizing the transportation assets of both countries will be a component in meeting these growth projections.

—The current system of trans-loading trucks at the border is both inefficient and uneconomical for all parties. This proposed pilot will be an important step to the improvement in these important supply chains by eliminating this outdated process.

—According to the Department of Transportation and its Inspector General, the Department has met all the mandated Congressional requirements to allow safe Mexican trucking companies access to U.S. markets. These requirements are as stringent as those applied to U.S.-based trucking companies.

—I have had the opportunity to meet with and negotiate with several Mexican trucking companies in a previous position and I can attest that the companies I met with were as safe and professional as American trucking companies.

We believe the proposed pilot is in the best interest of insuring a safe and efficient transportation system to meet the projected growth in freight movement and it should go forward.

Thank you for permitting us to testify before you today and we appreciate the opportunity to share our views on this important subject.

Senator MURRAY. Thank you very much, Mr. Ficker.

Mr. Parfrey.

STATEMENT OF CHARLES PARFREY, MEMBER, BOARD OF DIRECTORS, OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, GRAIN VALLEY, MISSOURI

Mr. PARFREY. Good morning, Chairwoman Murray, Senator Bond, and members of the committee. My name is Charlie Parfrey, I am president and COO of Parfrey Trucking Brokerage in Spokane, Washington. I also serve on the Board of Directors of Owner-Operator Independent Driver Association, and it is my privilege to be here today to represent members of OOIDA.

I have personally been involved in the trucking industry for more than 23 years. The first 10 of those years as an owner-operator, owning my own truck, driving my own truck, and running my business on the road. Small businesses, such as mine and others, and those represented by OOIDA are truly the heart and soul of the American trucking industry. Over 95 percent of U.S. trucking companies operate fewer than 20 trucks in their fleet, and about 50 percent of the motor carriers registered with the Department of Transportation operate one-truck fleets.

The members of OOIDA adamantly oppose opening our Nation's roadways to Mexican-domiciled trucks and truck drivers at this time. We view the recently announced pilot program as nothing more than an effort to get a foot in the door for Mexican-domiciled trucks and drivers, with the true intent of being to swing the door wide open in the near future, despite the numerous safety, economic and homeland security issues that remain unresolved.

U.S. truckers must operate under a tremendous amount of scrutiny, and an ever-increasing number of stringent safety regulations. Such burdens, by all available accounts, non-existent for truck drivers and trucking companies in Mexico. U.S. drivers are outrageous to think that our government would accept a lower standard for Mexican-domiciled trucks and drivers.

Specific examples include DOT accepting the Mexican commercial driver's license, drug and alcohol testing, physical qualification and examination standards as being equivalent to U.S. regulations.

Beyond the declarations by the U.S. Department of Transportation, that they have complied with the requirements of section 350 of the 2002 Transportation Appropriations Act, we have seen no details, or analysis to substantiate those claims. The DOT's efforts have been almost entirely secret, and beyond public view and scrutiny. OOIDA firmly believes that DOT has not complied with section 350 of the 2002 Transportation Appropriations Act.

Without having had the opportunity to review and analyze specific data, proposals and agreements, we are left with a tremendous number of unanswered questions.

In my written testimony, I have listed just a few of the basic questions that the DOT should be able to answer, before they can claim to be prepared to commit Mexican trucks and drivers into our country.

OOIDA has worked very hard, along with the Federal Motor Carrier Safety Administration, other Federal and State agencies, and other organizations to improve truck safety for the truck drivers, and for all highway users. Great strides have been made in many areas with the potential for even more gains just over the horizon. We are very concerned that the lack of compatible safety regula-

tions and reciprocal data systems in Mexico, will result in significant loss in the hard-won gains on safety that have been made.

Whether or not Mexican trucks and drivers can meet our safety standards, is the Mexican Government's responsibility. Whether only those trucks that comply with our regulations are allowed to operate in the United States is our Government's responsibility. And it is one that OOIDA believes that we are not prepared to take on.

To allow Mexican trucks to have full reign in our country's highways now, would be unfair to the American truckers who spend many hours, and thousands of dollars a year complying with our tougher rules. I would also like to point out that hundreds of millions of U.S. taxpayer dollar have been spent——

Senator MURRAY. You have 1 minute remaining.

Mr. PARFREY. [continuing]. Doing what the Government of Mexico cannot or will not do—ensure the safety of Mexican trucking industry by adopting meaningful, compatible regulations. It seems to me that the Department of Transportation is bending over backwards to accommodate Mexican carriers and the Mexican Government. They have dedicated an innumerous amount of personal resources and tax dollars to progress to the point that they can say that the Mexican-domiciled trucks and drivers are ready to operate in the United States.

PREPARED STATEMENT

Ironically, American truckers are footing the bill for the DOT's effort through Federal fuel taxes, highway use taxes, excise taxes on new equipment that they pay into the Federal Highway Trust Fund. Yet, on matters that would significantly help our American truckers and advance safety on our country's highways, we often hear from DOT officials that we have limited staff and resources. Matters such as the establishment of meaningful entry driver training, lack of available truck parking, secure safe havens for hazardous material loads, pressure by shippers and receivers to violate hours-of-service regulation, illegal abuse of drivers at loading and unloading docks, and insufficient oversight of freight brokers are just a few of the myriad of issues that have long-awaited to be addressed by the Department.

Senator MURRAY. Your time is expired.

Mr. PARFREY. Okay.

[The statement follows:]

PREPARED STATEMENT OF CHARLES PARFREY

CROSS BORDER TRUCKING WITH MEXICO

Good morning Chairwoman Murray, Senator Bond, and members of the committee. My name is Charlie Parfrey. I am the President and Chief Operating Officer of Parfrey Trucking Brokerage in Spokane, Washington. It is my privilege to be here today on behalf of the members of the Owner-Operator Independent Drivers Association (OOIDA).

OOIDA is a not-for-profit corporation established in 1973, with its principal place of business in Grain Valley, Missouri. OOIDA is the national trade association representing the interests of independent owner-operators and professional drivers on all issues that affect small-business truckers. The more than 150,000 members of OOIDA are small-business men and women in all 50 States who collectively own and operate more than 260,000 individual heavy-duty trucks. Owner-operators'

trucks represent nearly half of the total number of Class 7 and 8 trucks operated in the United States.

I have personally been involved with the trucking industry for more than 23 years. In 1984 I purchased a truck and founded Parfrey Trucking. For the next 10 years I drove the truck and ran my business from the road, first as a solo operation and then as a team operation with my wife Donna. In 1994, Donna and I sold our truck and began a freight brokerage business. Today we have annual gross freight-shipment billings of more than $5 million. We deal mostly in loads that are hauled on flatbed, step-deck and low-boy trailers such as lumber, steel, industrial equipment and heavy machinery.

The Owner-Operator Independent Drivers Association adamantly opposes opening our Nation's roadways to Mexico-domiciled trucks and truck drivers. OOIDA views the recently announced pilot program as nothing more than an effort to expedite the entry of Mexico-domiciled trucks and drivers without resolving numerous safety and homeland security issues.

Truckers domiciled in the United States must operate under a tremendous amount of scrutiny and a constantly growing number of safety regulations. Such burdens are, by all available accounts, nonexistent for truck drivers and trucking companies in Mexico. U.S. drivers are outraged to think that their government will impose fewer rules on Mexico-domiciled trucks and drivers performing the same jobs on the same highways.

Beyond the declarations by the U.S. Department of Transportation (DOT) that they have complied with the requirements of section 350 of the 2002 Transportation Appropriations Act (Public Law 107–87), we have seen no details or analysis to substantiate to those claims. DOT's effort has been almost entirely secret and beyond public view or scrutiny. As recently as this past fall, when asked about rumors that a Mexican motor carrier pilot program was being established, DOT officials responded that there was no such plan currently in the works.

Therefore, we are fundamentally unable to comment on the sufficiency of DOT's or State enforcement agencies' efforts and readiness to comply with section 350 or to enforce motor carrier safety laws and NAFTA-related immigration and cabotage rules. Without having had the opportunity to review and analyze specific data, proposals, and agreements, we are left with a tremendous number of unanswered questions. OOIDA and its members are very interested to hear the testimony of American and Mexican transportation officials this morning on the following questions:

—Does DOT plan to publish any detailed findings or analyses describing how it has achieved the requirements outlined in the 2002 appropriations bill? If not, then how can Congress or the public evaluate DOT compliance with the law?
—Does DOT plan to accept the Mexican Licencia Federal de Conductor in place of a U.S. Commercial Drivers License (CDL)?
—Does DOT plan to accept a Mexican logbook in place of a U.S. log book?
—Does DOT plan to publish any notice in the Federal Register requesting public comment on any aspect of the Mexican truck program?

If DOT plans to accept any Mexican motor carrier or driver safety requirement in lieu of a U.S. safety requirement, then DOT must go through the procedures for a pilot program or waiver under 49 U.S.C. § 31315.

—Does DOT have an English translation of the following safety requirements?
  —Mexican CDL requirements.
  —Mexican driver medical qualification requirements.
  —Mexican driver drug-testing requirements.
  —A list of events that disqualify an individual from holding a Mexican CDL; i.e. the individual's violation of motor vehicle laws in their personal automobile.
  —Mexican Hours-of-Service rules and logbook record keeping rules.
—Has DOT performed a comparative analysis of the Mexican safety rules with U.S. rules?

The last time DOT performed a comparison of Mexican CDL to the U.S. CDL was in 1992. Since then, the United States has implemented many new driver qualification requirements and disqualification rules. Does DOT know whether the Mexican CDL has kept up with these changes?

—Would DOT make public the translations of Mexican motor carrier safety laws it relied upon and its analyses of such laws?
—Would DOT make available its assessment of the availability and quality of data concerning Mexican motor carriers and drivers? For example, data related to:
  —performance and safety management programs.
  —a carrier's compliance with hours of service rules.
  —a carrier's safety history.

—an individual's driving history, both in commercial vehicle and personal automobiles?

—Who will collect data involving Mexican drivers' violations of U.S. laws in the United States? How will we know when a Mexican driver will have attained a combination of violations of Mexican law and U.S. law that disqualify that individual to hold a U.S. CDL?

—How prepared are State officials to inspect Mexican trucks, including drivers? Do State enforcement personnel have access to the same data about Mexican drivers as other officials? Will State officials have access to the same data about Mexican drivers as is collected in CDLIS about U.S. drivers?

—Only law enforcement personnel inside the United States are in a position to determine whether a Mexican driver has picked up a load in the United States for delivery in the United States. Such action would be a clear violation of their U.S. operating authority, and a violation of both U.S. immigration and cabotage rules. How prepared are U.S. Federal and State officials within the U.S. border to recognize when a Mexican driver is violating these rules and to enforce them?

—Will Mexican carriers be required to pay a heavy vehicle use tax? Will Mexican trucks be required to participate in the International Fuel Tax Agreement (IFTA) to pay their fair share of taxes on fuel purchased in Mexico and used on U.S. highways and how are Federal fuel taxes to be collected?

These are the minimal questions that DOT should be able to answer before they can claim to be prepared to permit Mexican trucks and drivers into the country. Without specific information being made available to us, we are forced to primarily rely upon the last audit on cross border trucking completed by the Department of Transportation's Office of the Inspector General (DOT OIG) in January of 2005, as well as anecdotal information gleaned from contact with the trucking community, law enforcement personnel and government officials. The DOT OIG's audit is of course focused on the preconditions to opening U.S. roads to Mexican-domiciled trucks that were set forth by section 350 of the 2002 Transportation Appropriations Act (Public Law 107–87). In the remainder of this testimony, I will detail why these questions are so important to Congress' oversight of the Mexican truck matter.

SAFETY

OOIDA has worked very hard along with the Federal Motor Carrier Safety Administration (FMCSA), other Federal and State agencies, and many industry organizations to improve truck safety for truckers themselves and for all highway users. Great strides have been made in many areas with the potential for even more gains just over the horizon. A uniform commercial licensing system with a nationwide computerized data network capable of identifying and weeding out unsafe, problem drivers along with uniform inspection and enforcement programs have resulted in significant improvements in highway safety. OOIDA is very concerned that the lack of safety regulations, and compatible and reciprocal systems in Mexico will result in a significant loss in the hard-won gains that have been made.

We believe that Mexico lacks the safety infrastructure, the resources, and the will to effectively promulgate and enforce compatible motor carrier safety regulations. In the United States, motor carriers' safety programs are extensive and the safety regulations are widely enforced through roadside inspections and compliance reviews. These are working and tested programs designed to ensure motor carrier compliance and highway safety—and even they are not perfect.

Mexico is years away from instituting substantially similar programs necessary to ensure adequate safety compliance of its trucking operations. This safety concern also encompasses Mexico's relatively lax regulation of its truck drivers. Although Mexico does require that a truck driver obtain a Commercial Drivers License (CDL) and undergo some form of a physical examination, the Mexican requirements are much less stringent than those required of U.S. drivers. In addition, U.S. drivers also face strict, specific drug and alcohol testing and are subject to hours-of-service limitations. Mexican drivers allegedly face similar rules, but are they truly compatible? There is no way for Federal or State enforcement officials to reasonably believe that a Mexican driver is drug-free, or know how many hours that driver has been working behind the wheel at the point they cross our border. These are two driver issues that our Department of Transportation and State enforcement agencies take very seriously in regard to U.S. drivers.

Commercial Drivers License

First, the Association believes there is no true equivalent of the U.S. Commercial Driver License system in place in Mexico. While both U.S. and Mexican government officials claim Mexico's commercial driver licensing requirements are equivalent to the U.S. rules, such has never been proven true. Not only are U.S. regulations on

American truckers more stringent in terms of verifying that a driver has been tested, but U.S. licenses can also be verified to show driving history, violations and compliance of any vehicle driver going back many years. When enforcement officials in the United States run a check on a Mexican CDL the only information they can access will be that of the driver's previous operations in the United States, not his or her safety history in Mexico.

CDL rules in the United States have changed dramatically since 1992. The most substantial change requires that driver convictions occurring while driving a personal vehicle be tied to CDL qualification. Certain convictions in a personal vehicle will result in disqualification and loss of commercial driving privileges for a specified period of time.

Hours-of-Service Regulations

In Canada they have very detailed hours-of-service rules and a logbook similar to those used in the United States. Canadian drivers coming into the United States are subject to having their logs checked and face possibly being put out-of-service (OOS) because of logbook violations. Mexico has no driver hours-of-service regulations in place. Consequently, there is no way to begin to verify how many hours a Mexican driver has operated in any given day or week. It has been reported that Mexican drivers commonly operate 16 to 20 hours a day or more. Regardless of whether Mexican drivers adhere to the U.S. standard while operating in the United States, there is no way of knowing how long the drivers had been driving prior to entering our country.

Alcohol & Drug Testing

U.S. drivers are extensively tested for use of controlled substances and alcohol. OOIDA believes there is no drug and alcohol testing program in Mexico comparable to that of the U.S. program. Although Mexico claims to have a program in place, the Association believes they have no means or will to enforce the rules. It would be inherently inequitable to allow Mexican drivers to operate in the United States without being subject to the same stringent standards required of U.S. drivers. To permit a certain class of drivers to be largely and effectively "exempt" from these regulations would be a manifest injustice and place U.S. drivers at a disadvantage.

The DOT OIG's audit from 2005 states, "Mexico does not have a certified drug testing lab at this time. . . . Collection facilities in Mexico are not reviewed by U.S. officials." OOIDA doubts that Mexico has allowed any U.S. officials to inspect or certify their labs or examine their control of collection sites. This is required by section 350(1)(B)(ii), "verification of a drug and alcohol testing program consistent with part 40 of title 49, CFR". Those carriers that already have the right to operate beyond the border zone send their specimens to U.S. labs, but still no one to our knowledge has ever inspected the collection sites for procedures and controls.

Safety Inspections

A representative of FMCSA recently claimed that the agency is now performing over 350,000 inspections on Mexican trucks each year. The latest statistics related to this that are available to the public are from 2005. These statistics seem to indicate that FMCSA is embellishing the number of inspections performed in order to "appear" more proactive with inspections of Mexico-domiciled trucks and drivers than it actually has been.

The 350,000 number stated by the FMCSA representative is a compilation of the total variety of CVSA Level I, II and III inspections performed on Mexican trucks in 2005. The actual number of single contacts between inspectors and Mexico-domiciled truck drivers is 194,657. Out of that total population of 194,657 inspections, 180,033 were either Level I or II inspections, which include vehicle inspections.

FMCSA has essentially taken the vehicle inspection data (180,033) derived from driver contact data (194,657) and added that back into the total to arrive at the 350,000+ number. There really was only one contact with truck and driver, that contact is being counted twice.

Utilizing FMCSA NAFTA Safety Stats data, the agency shows there were 4,675,887 incoming trucks to the United States from Mexico in 2005. That 4.65 million represents the entire vehicle population that could be subjected to an inspection. Simple math indicates that the inspection rate of the entire available vehicle population is 3.9 percent. Put another way, on any particular crossing, a Mexican truck has a 96.1 percent chance of not being inspected.

FMCSA has identified 41,101 Mexico-domiciled power units that enter the United States annually. The agency could possibly argue that they are effectively inspecting these trucks at an average of 4+ times a year (194,657 divided by 41,101). It seems unlikely the agency has accounted for the entire truck population that crosses into

the United States. Certainly drayage operations could cross the border daily. Long-haul trucking in Mexico would not have the same power unit crossing daily.

Safety Data

OOIDA believes that there are currently very little if any data existing in Mexico on the integrity and safety performance of Mexican motor carriers. Likely, the only available data on Mexico-domiciled carriers resides in the United States, and only on those vehicles and drivers that have undergone an inspection or on carriers that have been caught operating illegally in the United States. All available data on Mexican carriers must first be sought out and compiled, then heavily considered prior to granting U.S. operating authority. OOIDA is unaware of the intention of the DOT to do this for Mexican motor carriers involved in the proposed pilot program.

Section 350(1)(B)(v) states that a review of available data concerning that motor carrier's safety history must be available. Section 350(E) states that the information infrastructure of the Mexican government must be sufficiently accurate, accessible and integrated with that of the United States enforcement authorities to allow United States authorities to verify the status and validity of licenses, vehicle registrations, operating authority and insurance of Mexican motor carriers while operating in the United States, and that adequate telecommunications links exist at all United States-Mexico border crossings used by Mexican motor carrier commercial vehicles, and in all mobile enforcement units operating adjacent to the border, to ensure that licenses, vehicle registrations, operating authority and insurance information can be easily and quickly verified at border crossings or by mobile enforcement units.

Once a Mexico-domiciled truck enters the United States how is the roadside inspector to verify that the driver's license and medical provisions are updated and legal if there is no apparent link to the Mexican data? According to the DOT OIG's last audit, 67 percent of Mexican motor carriers had not submitted updated census forms as compared to 42 percent of U.S. carriers. And, 51 percent of Mexican carriers reported having zero power units as compared to 10.3 percent of U.S. carriers. While this may all be verified and checked during a compliance review, it does point out that the data that is available from a carrier's safety record, which is checked at roadside, will not be available to inspectors. In fact 52 percent of Mexican carriers showed zero drivers, as opposed to 14.5 percent for U.S. carriers. So how can you check violations on a driver at roadside?

Enforcement of Operating Authority

Laws governing the trucking industry restrict trucks and drivers from Mexico and Canada to carrying international shipments between their home countries and individual points in the United States. Those same laws prohibit foreign trucks and drivers from moving loads from point to point within U.S. borders. Under NAFTA, a Mexican truck can only deliver a cross-border shipment to a destination in the United States, pick up another shipment for return to Mexico, or drive through the United States on the way to Canada. We have no system in place to ensure they adhere to these restrictions.

Generally, under U.S. law and the terms of NAFTA, only U.S. carriers can pick up and deliver freight within the United States. Currently, however under 19 CFR § 123.14(c)(1) the U.S. Customs Service provides an exception allowing foreign-based vehicles to transport domestic shipments when the shipment is incidental to the immediate prior or subsequent engagement of the vehicle in an international movement. The immigration regulations governing foreign drivers are more restrictive. However, there is currently no effective mechanism in place for customs, immigration enforcement or any other agency to enforce these restrictions.

Will the United States be able to limit Mexican truckers to hauling only international freight during their operations in the United States? OOIDA contends the answer is, "No" for the foreseeable future. In the present deregulated environment and under the current system of motor carrier enforcement the competence of the United States to enforce the cabotage restrictions is virtually non-existent.

Mexican truckers willing to haul at substantially lower rates would become a very attractive option to U.S. shippers, brokers and freight forwarders. And, with no credible enforcement effort in place to deter them, Mexican motor carriers will surely seize the opportunity to arrange the pick up and delivery of point-to-point domestic loads all over the United States earning far more than they can in their own country. Networks of profiteering freight brokers will provide plenty of business by happily arranging such loads and pocketing a handsome markup for themselves while knowing full well these trucks will skirt many, if not all, of the rules for safety.

Aside from the initial contact when a truck enters the United States at the border, U.S. Customs and Immigration personnel rarely, if ever, come in contact with a foreign-based motor carrier's vehicles and drivers. Most State motor carrier enforcement personnel, those who regularly encounter commercial vehicles and drivers in the interior, are trained only to enforce Federal and State vehicle and driver safety regulations. Few consider the origin and destination of a load, and how a truck's movement may relate to the motor carrier's country of domicile. Furthermore, State enforcement agencies appear unwilling at this point to take on the task of enforcing cabotage restrictions. Even if state Commercial Motor Vehicle (CMV) enforcement agencies received the necessary funding, and inspectors were properly trained and had the requisite authority, at current staffing levels there are simply not enough of them to catch more than a token number of violators.

Federal transportation officials recently claimed that FMCSA inspectors have been trained on how to detect if someone is operating beyond the bounds of their authority and they claimed that every State has instituted regulations about enforcing this provision. The Commercial Vehicle Safety Alliance (CVSA), which represents State commercial motor vehicle law enforcement agencies, has admitted that no such formal training exists. It isn't just inspections on the border but on the roadside throughout the country and these are not done for the most part by FMCSA, but rather State enforcement.

The lack of a comprehensive enforcement effort regarding NAFTA rules is a result of the same problems Congress is discovering about our national security efforts. Enforcement jurisdiction is split among several different Federal and State agencies. There is no single enforcement official in the United States who can stop a Mexican truck and determine whether a foreign trucker has a valid commercial driver's license, determine whether the trucker has valid insurance, determine whether the truck is safe, determine whether the foreign truck entered the country properly, and determine whether the load is a legal NAFTA shipment into or out of the United States. More importantly, even if one enforcement official could identify all of those facts, he or she would not have the authority to enforce all of these rules. As we point out, however, DOT rules are not the only rules foreign trucks are required to follow, but currently they are the only rules that state enforcement officials have the authority to enforce under compatible State law.

Once a truck crosses the border and enters the interior of our country, State officials are the only enforcement personnel that a foreign trucker is ever likely to see. There is little, if any, Federal presence beyond the border to inspect the activity of foreign trucks to determine their compliance with our laws under NAFTA. State officials do not have the training to recognize whether a truck is in compliance with customs rules, whether a driver is in compliance with immigration rules, or whether a load is being hauled legally under NAFTA rules.

State enforcement officials have expressed frustration to OOIDA regarding the lack of direction and lack of information they are given in exercising their limited authority over foreign truckers. Some enforcement personnel have told OOIDA that their biggest frustration is not being able to communicate with foreign drivers to get their cooperation to conduct a safety inspection—being able to communicate in English is a requirement of the Federal Motor Carrier Safety Regulations. Others describe a multitude of problems they find in trucks that have already passed the border. The problem is not that there are not enough inspectors and that truckers avoided inspection, but that those who inspect them do not have the power to take definitive action, even when the problems are egregious.

OOIDA members report to us that the enforcement officials in some States have given up trying to inspect foreign trucks. They just waive foreign trucks through the weigh station while U.S. truckers are stopped and put through the normal inspections. This is an outrageous state of affairs that we did not bargain for with NAFTA. There either needs to be a much larger Federal enforcement effort or better Federal-State coordination if there is to be a meaningful NAFTA enforcement effort.

Fees & Taxes

The principal way that highways and bridges are financed in the United States is through taxes assessed on the trucking industry. Fees and taxes on highway use are primarily collected through registration fees and through taxes on fuel consumed under the International Registration Plan (IRP) and the International Fuel Tax Agreement (IFTA), respectively. Because Mexico does not participate in either plan, the fees and taxes cannot currently be collected under the agreements. The States rely on honest, periodic reporting of miles traveled and gallons of fuel purchased by motor carriers to collect user fees and taxes under IRP, IFTA and various other State-specific taxation programs.

Apparently, IRP and IFTA credentialing will be accomplished by four Border States. Effective reporting also requires effective auditing. Are Mexican carriers simply to be included in a jurisdiction's total numbers for chance auditing? Will Mexican carriers be grouped separately for auditing? Can auditors legally travel to Mexico for auditing and how will civil penalties be enforced, other than the threat of pulling U.S. operating authority?

As stated previously, no system is yet in place to assure that Mexican trucks will be required to pay even the most easily enforced fuel taxes, those collected at the pump. The more complicated highway use taxes such as the Federal Highway Use Tax, Federal excise taxes, Ad Valorem taxes and mileage taxes that are essential to maintaining U.S. highways appear to have not even been considered by the FMCSA. Failure to subject Mexican trucks to an equal share of the tax burden for the highways they will be using will place U.S. truckers at an enormous economic disadvantage, and as more and more U.S. truckers are displaced, this will result in substantial highway funding short falls under this scenario.

American truckers caught with red-dyed (untaxed) fuel in their tanks face significant fines. Mexican trucks can carry as much untaxed, high-sulfur fuel as they deem practical with oversized or additional fuel tanks. The reason anyone would want to carry additional fuel is directly related to fuel tax evasion. Will there be limitations on how much fuel can be carried into the United States by Mexican trucks?

Extradition

When Mexico domiciled trucks are allowed to travel U.S. highways there is every reason to believe they will at least suffer the same injury/fatal accident involvement rate as American and Canadian trucks. Post-accident investigations will assuredly discover illegal behavior on the part of some drivers. Violations of hours-of-service regulations and delays in post-accident drug testing results are examples of violations that can take time to decipher when determining fault.

Charges against a driver, such as manslaughter, invariably occur well after accident involvement. This time delay will allow a Mexican driver to flee back across the southern border to safety. Unfortunately, Mexico has not adhered particularly well to treaty obligations to extradite indicted/wanted individuals, especially in cases involving a possible life sentence without parole or the death penalty.

Extradition from Mexico has proven to be problematic for U.S. law enforcement agencies. This problem is exemplified by the inability of the Los Angeles District Attorney's Office to secure extraditions from Mexico of hundreds of murder suspects. California Senator Diane Feinstein has called for a renegotiation of the extradition treaty with Mexico. The single-minded rush to open our southern border to Mexican trucks without the assurance that Mexican nationals will be returned to be held accountable before American courts mocks the pursuit of justice in lieu of economic gain for a few.

CONCLUSION

OOIDA applauds this committee's continued close scrutiny of the FMCSA's safety enforcement efforts. We encourage you to continue to ask whether the United States is adequately prepared to ensure that Mexican trucks and drivers comply with our laws and are safe; not whether the DOT is doing the best it can with its limited resources and staff.

Whether or not Mexican trucks and drivers can meet our safety standards is the Mexican trucker's responsibility. Whether only those trucks that comply with our regulations are allowed to operate the United States is our responsibility, and it is one that we are not prepared to take on. To allow Mexican trucks to have full reign of our country's highways now would create a safety hazard on our roads and would be unfair to American truckers who spend many hours and thousands of dollars a year complying with our tougher rules.

A tremendous amount of questions remain unanswered by the Department of Transportation. It is simply abhorrent to think that our government would allow Mexican trucks full access of U.S. highways before all safety, economic and homeland security concerns are completely and appropriately addressed.

OOIDA believes that no matter what the resolution of the NAFTA trucking issue, when the border is open to Mexican trucks, the benefits will all flow toward Mexico. Mexican truckers will gain access to new markets and customers on the safest and most open highway system in the world. In return, the U.S. truckers are invited to travel on a more dangerous highway system in Mexico while the U.S. Government is given the burden of performing the truck safety enforcement function for both countries.

Chairwoman Murray, Senator Bond and members of the subcommittee, thank you for providing me with this opportunity to testify on behalf of the members of the Owner-Operator Independent Drivers Association.

I would be pleased to answer any questions that you may have.

Senator MURRAY. Thank you very much, Mr. Parfrey.

Ms. Claybrook.

STATEMENT OF JOAN CLAYBROOK, PRESIDENT, PUBLIC CITIZEN, WASHINGTON, DC

Ms. CLAYBROOK. Thank you very much, Madame Chairman and Senator Bond, Senator Lautenberg. I appreciate the opportunity to testify.

I am here as President of Public Citizen, a National Public Interest Group of 100,000 members nationwide, and I am also the former Administrator of NHTSA.

Many of the preeminent safety groups, including Advocates for Highway and Auto Safety, Citizens for Reliable and Safe Highways, and Parents Against Tired Truckers, support the views of my—many of the views of my testimony.

Let me say, first that the Federal Motor Carrier Safety Administration in the U.S. Department of Transportation responsible for overseeing motor carrier safety in the United States, including trucks crossing the southern border, is just not up to the job.

The Agency has never met any of its safety goals, even after weakening them repeatedly over 7 years, yet has nearly one—it has had nearly every one of its important safety regulations unanimously overturned by Courts of Appeal in recent years. It has ignored numerous specific congressional directives, mandates to advance and improve safety, and it completely ignores its statutory mandate to make safety its highest priority.

It is clear that the enactment of the Murray-Shelby language in section 350 of the DOT Appropriations Act has fostered long-overdue changes and improvements in the Federal Motor Carrier Safety Administration's activities. The requirement for oversight audits by the Inspector General was essential to keep the pressure on DOT for action on a multitude of safety issues that have been involved, and we thank you—so much—for that.

However, DOT's recent announcement that it would partially open our southern border by conducting a fake, 1-year pilot project undermines the Department's credibility. It appears to be a calculated, cynical move to open the border to all commercial traffic, regardless of safety, as rapidly as possible, probably in 2008.

It is apparent that this so-called pilot project does not comply with 49 U.S.C. 31315(c) which was a part of the TEA–21 law, which establishes legal requirements for all DOT pilot programs.

It is limited to 100 hand-picked Mexican-domiciled carriers for a short 1-year period that is too limited to allow for the collection of sufficient data for an accurate and reliable analysis for the safety performance of these NAFTA trucks. It is not scientific, it does not—as the law requires—provide public notice and seek public comment on its design and methodology.

In fact, just the opposite. This project has been kept secret for more than 2 years, according to the mix of papers that said it started working on it in 2004, during which the Agency refused to respond to a major Freedom of Information Act request that was filed

over 4 months ago about it by Advocates for Highway and Auto Safety, and I wish to submit that request, for the record, and ask the committee to demand that it be answered immediately.

[The information follows:]

ADVOCATES FOR HIGHWAY AND AUTO SAFETY

FOIA REQUEST

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Advocates for Highway and Auto Safety (Advocates) requests that the Federal Motor Carrier Safety Administration (FMCSA, the agency) provide access to the following:

—All records regarding any and all FMCSA activities to formulate, develop, evaluate, implement, or otherwise consider any effort, plan, initiative, pilot program or other program intended to evaluate any Mexico-domiciled motor carriers that would be permitted by FMCSA to operate beyond the current U.S. municipalities and commercial zones on the U.S.-Mexico border.

—All records that discuss, evaluate, consider or refer to how such an effort, plan, initiative, pilot program or other program for evaluating any Mexico-domiciled motor carriers operating beyond the current U.S. municipalities and commercial zones on the U.S.-Mexico border complies with the funding restriction of section 350(a) of the fiscal year 2002 U.S. Department of Transportation and Related Agencies Appropriations Act, Public Law 107–87 (Dec. 18, 2001).

—All records that consider, discuss, evaluate, or refer to the specific policy considerations, decisions, and actions by the FMCSA and the U.S. Department of Transportation for how any such pilot program or other program, plan, or initiative for evaluating some Mexico-domiciled motor carriers operating beyond the current U.S. municipalities and commercial zones on the U.S.-Mexico border complies with each specific requirement set forth in sections 350(a) and (b) of the fiscal year 2002 U.S. Department of Transportation and Related Agencies Appropriations Act cited above.

The scope of this request includes, but is not limited to, drafts, memoranda, letters, electronic mail and files, technical analyses, technical assistance documents, and tables, both at headquarters and agency field offices, and covers the period of time from December 18, 2001, to the date of receipt of this FOIA request.

Following your notification to us of having searched and identified the relevant records within the statutory time frame controlling a response to a FOIA request, we will arrange with FMCSA personnel to inspect the records you make available to us and then determine whether and to what extent any duplication of selected records might be required.

Should you deny access to any of the requested records, please describe each denied record in detail and, in each instance of denial, state the exact statutory basis for your denial as well as your reasons for believing that this statutory basis for denial should be applied in this instance. Also state separately your reasons for not invoking your discretionary authority to release the records in the public interest. If you determine that some records or portions thereof are exempt from release and you decide not to release them, we ask that you promptly provide us with access to all other records or segregable portions thereof.

Since furnishing the records, including any necessary duplication, will be used solely to inform Congress and the public of the safety effects of permitting commercial motor vehicles operated by Mexico-domiciled motor carriers to conduct commerce beyond the U.S. municipalities and commercial zones on the U.S.-Mexico border, we ask that any fees associated with this request be waived pursuant to 5 U.S.C. § 552(a)(4)(A) for Advocates, a not-for-profit, consumer advocacy organization. Advocates has no commercial interest in, and will make no commercial use of, any materials supplied to us pursuant to your release on any of the requested records. Moreover, a release of the requested records will generate benefits for the general public by, among other things, helping to promote public awareness of the safety impacts of FMCSA decisions and actions affecting Federal laws, regulations, and commercial transportation practices under its jurisdiction, including the quality of the agency's ability to effect compliance with relevant laws and regulations governing the operation of Mexico-domiciled commercial motor vehicles beyond the municipalities and commercial zones on the U.S.-Mexico border and to meet Congressional and U.S. Department of Transportation objectives for enhancing motor carrier safety and the safety of the traveling public. In further support of a fee waiver, a statement is enclosed of Advocates' extensive qualifications and activities as a not-

for-profit, public interest organization in the field of motor vehicle and highway safety.

We suggest that you initiate your search for the relevant records responsive to this FOIA request by contacting Mr. William Quade, FMCSA staff. Advocates' identification of this agency employee is an effort to assist the agency in starting its search for responsive records and is not an attempt to limit the scope of your investigation or the number of personnel whom you contact for records falling within the scope of Advocates' FOIA request.

Access to the records sought through this FOIA request is required within 20 days of your receipt of the request in conformity with 5 U.S.C. § 552(a)(6)(A)(i). If you anticipate the need for any delay beyond this time limit for responding to our request, you are required to notify us promptly in writing of the need for and the length of the prospective delay. However, we also would appreciate timely telephone calls placed to the telephone number on this letterhead informing the undersigned of the progress and completion of your compliance with this FOIA request. If some records falling within the scope of our FOIA request are available prior to completion of FMCSA's search for and identification of all relevant records that are responsive to our request, we would appreciate an opportunity to inspect such records as soon as they can be made available.

Ms. CLAYBROOK. We'd also like to submit to the committee a list of questions that we have—some of which are mentioned in our testimony, about this pilot project, which has not even been designed yet, yet it's supposed to start in 60 days.

[The information follows:]

QUESTIONS FROM JOAN CLAYBROOK

CROSS BORDER TRUCKING WITH MEXICO

(This organization asked the committee to submit these questions to DOT on their behalf.)

Question. In testimony before the Senate Commerce Committee nearly a year ago you stated that only 23 of the 25 commercial crossings have permanent inspection facilities. Today, how many of these 23 border crossings now have permanent inspection facilities?

Question. According to the GAO report published in December 2001, Customs typically allows State and Federal truck safety inspections on the agency's property on a temporary basis; however, if capacity is reached for storing trucks placed out-of-service, inspectors are unable to conduct additional safety inspections. Furthermore, as a result of 9/11, Customs is reassessing its space needs at these facilities, with important implications for truck inspection activities. Customs said it would no longer allow trucks placed out-of-service for safety violations to remain on the Customs compound due to safety concerns related to allowing mechanics and tow truck operators on the compound. With no permanent inspection facilities at 23 of the 25 commercial crossings, how will this affect the ability of Federal and State inspectors to keep unsafe trucks and unsafe drivers from entering the United States?

Question. According to the December 2001 GAO report, there are 1.4 million truck crossings, or 33 percent of all truck crossings, occurring at Laredo. Furthermore, according to the GAO at the Laredo World Trade Border Station there are only 2 spaces for State truck inspections, 12 inspection and out-of-service spaces for Federal truck inspections and only 384 square feet of office space for Federal inspectors—about the size of a bathroom and small bedroom. A similar situation is found at the Colombia Border Station in Laredo (1 space for State truck inspections, 3 spaces for Federal truck inspections, 15 spaces for out-of-service spaces and only 384 square feet of office space for Federal inspectors). Is this adequate for the busiest crossing point on the southern border and what has changed at the Laredo crossing since you testified before us in July to improve the situation?

Question. Otay Mesa has half the crossing as Laredo, 20 spaces for out of service vehicles, 4 state-of-the-art inspection bays and 7,900 square feet of office space for inspectors. When specifically will the other crossings have similar facilities and what will happen in the meantime to the quality and quantity of inspections at Laredo compared to Otay Mesa?

Question. In your testimony of July 18, 2001 before the Senate Commerce Committee you stated that "education" was one of the keys to opening the border and that the governments of Mexico and Canada will make presentations about their re-

quirements so that everyone will understand the various requirements. Yet, according to an article in Transport Topics on June 2, 2002, Mexican officials failed to appear at a NAFTA conference specifically aimed at sorting out the complex regulatory details of cross-border trucking and that widespread confusion was rampant from all three NAFTA countries about each country's regulatory practices and how rules would apply to foreign operators. The deputy transport minister of Canada stated that reaching agreement among the three countries each with varying state and provincial regulations is a monumental task. In light of this confusion, the need for an agreement by all countries and the lack of information, should the border be opened before there is clarity and agreement on requirements and procedures?

Ms. CLAYBROOK. In addition, section 350 does not authorize the border to be open to a select group of trucks. Section 350 makes no exceptions for compliance, with all elements of its requirements in subsections A, B, and C. As the section states, these obligations must be fully complied with, before any truck is permitted to cross the border.

By contrast, what Secretary Peters proposes, is to comply with some parts of section 350, and assert that the border can be open for that "slice" of section 350.

We also have serious concerns about a number of items required in section 350 that must be resolved before the border can be opened. Information about convictions and license suspensions of drivers from Mexico is unreliable. Serious questions on drug and alcohol testing, medical examinations, physical fitness of drivers from Mexico are not resolved.

The FMCSA relies on poor data and defective procedure for identifying high-risk motor carriers, and prospects for compliance with hours-of-service limits are poor, compliance with Federal motor vehicle safety standards by trucks and buses built in Mexico are still not resolved, because there's no label indicating when those trucks were built, and therefore, which standards they must comply with.

There are other issues which demand attention, such as DOT documenting that every State is actually enforcing enacted State laws to issue out-of-service orders to every foreign vehicle that does not have proper operating authority. They got the laws passed, but they don't say they're going to use them.

Requiring that commercial vehicles entering the United States are equipped with electronic on-board recorders——

Senator MURRAY. You have 1 minute remaining.

Ms. CLAYBROOK [continuing]. To document hours-of-service requirements. We don't have it in the United States, it's a terrible thing, because you cannot enforce the hours of service, the Courts of Appeal have instructed the agency to issue such a rule, they issued one that doesn't apply to most trucks.

And increasing the minimum level of insurance required for Mexico-domiciled carriers engaging in the United States from the current requirement of $750,000 per truck, per crash—which is totally insufficient for a major truck crash—to $10 million, at least. Otherwise, the people of the United States are going to be paying the bill for these crashes.

It's clear that opening the border is akin to a Perfect Storm. It's a predictable disaster. The U.S. agency responsible for overseeing safety for large trucks is largely 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 into the U.S. highways. Too often in the past

few years, we have seen this deadly combination fail the American public, whether its Katrina or the Walter Reed debacles. And we have seen that once we embark on a poor course of action, it's impossible to take it back.

My written testimony outlines these tales in great detail. This committee is the only entity the American public can depend on to prevent this border from opening until these requirements are met.

PREPARED STATEMENT

Madame Chairman, in order to serve the public properly, and to protect safety, we must avoid an over-zealous, mission-accomplished mindset and 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.

[The statement follows:]

PREPARED STATEMENT OF JOAN CLAYBROOK

Good morning. I am Joan Claybrook, President of Public Citizen. I wish to commend the Subcommittee on Transportation, HUD, and Related Agencies 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 very much 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 Advocates for Highway and Auto Safety (Advocates), Citizens for Reliable and Safe Highways (CRASH) and Parents Against Tired Truckers (P.A.T.T.), support many of the views 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 United States—including trucks crossing over the Southern border—is just not up to the job. I have been involved in truck safety issues for over 30 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 7 years, has had nearly every one of its 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 of Congressional safety mandates 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 United States 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.

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. It is no coincidence that the Secretary of

Transportation announced a limited pilot program that includes just 100 hand-picked Mexico-domiciled trucking companies and a test period that will conclude in just 12 months. This select group of motor carriers most likely 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." 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 3-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.

It is apparent that this pilot program is not really a pilot program, and thus does not comply with 49 U.S.C. 31315(c), which establishes a template for all pilot programs conducted by DOT. In addition, section 350 does not permit it. 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 for that slice. Her proposal does not comport with the law.

Thus, 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 avoid this "mission accomplished" mindset and 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.

SUMMARY OF RECOMMENDED ACTIONS

Madam Chair, 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 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 Katrina and the Walter Reed 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 outline 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 Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 2002 (2002 U.S. DOT Appropriations Act), Public Law 107–87, has fostered long overdue changes and improvements in FMCSA's activities. Nevertheless, the border is not ready to be opened for NAFTA truck travel throughout the United States. 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 once again 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 United States are equipped with electronic on-board recorders to document hours of service.
—Increase the minimum level of insurance coverage required for Mexico-domiciled motor carriers engaging in commerce in the United States.
—Require DOT to respond to outstanding FOIA requests or these issues in full, with no withholding of any records.

BACKGROUND—THE BORDER ZONE AND NAFTA

In the Bus Regulatory Reform Act of 1982, Public Law 97–261, Congress imposed a legislative moratorium on granting operating authority to both Mexican and Canadian motor carriers seeking to operate in the United States 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 3 and 20 miles inland from the U.S. border.

In December 1992, Canada, Mexico and the United States 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 United States, 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 1990's 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 United States 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), Public Law 105–178, responded to the poor inspection effort at the U.S.-Mexico border by allowing up to 5 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 United States.

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 United States to open the border for commercial motor vehicles or face permanent trade sanctions, in February 2001, the United States 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 United States—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.

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 United States 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 United States 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.

It is also a serious problem that DOT and FMCSA have not been forthcoming with information about this pilot program. Because such a program has been the subject of rumors for some time (according to DOT planning that began in 2004), Advocates for Highway and Auto Safety filed a request with the agency for records pertinent to the pilot program under the Freedom of Information Act (FOIA). Although the law requires a release of records within 20 working days, no records have been released even though over 4 months have elapsed since the FOIA request

was filed on October 17, 2006. Again, it would appear to be no coincidence that Advocates' FOIA request has been stonewalled as DOT prepared in stealth to announce its pilot program.

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.

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 United States 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 United States 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 United States 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 United States 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 United States, 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.

FMCSA HAS A POOR RECORD OF ENSURING THE SAFETY OF ALL TRUCK AND BUS OPERATIONS IN THE UNITED STATES, 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 United States 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 2 years. The 2005 figure represents a comprehensive safety evaluation of only three-quarters of 1 percent (0.75 percent) 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 2 percent were performed.

The agency estimates that there were 4,575,887 crossings into the United States 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 to long-haul foreign commerce traveling throughout the United States.

SEVERAL MAJOR AREAS OF MEXICO-DOMICILED MOTOR CARRIER SAFETY AND OVERSIGHT REMAIN SERIOUSLY DEFECTIVE AND JEOPARDIZE SAFETY FOR EVERYONE

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.]

We know trucks are not being put out of service in many States, even though they now have the authority to do so. FMCSA representatives have been very careful to characterize the States' new authority to place Mexico-domiciled motor carriers out of service, but they often do not mention their actual use of this authority. For example, in an 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 out of service.

FMCSA's fiscal year 2008 budget submission to this committee reveals the festering problem of the States failing to put illegal carriers out of service 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 fiscal year 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 fiscal year 2008 of 30 States to suspend, revoke, or deny vehicle registrations based on out of service orders. [Id.]

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 4 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 2 years later, there seems to have been no improvement. It appears that FMCSA's fiscal year 2008 budget goals for stopping trucks and buses already sanctioned with out of service 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 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 United States. 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.

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 United States. 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 (November 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 United States. 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 United States. 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 United States.

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

Apparently, DOT is not contemplating long-haul commerce in the United States either by Mexico-domiciled 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 United States have not been satisfactorily resolved by the Transportation Security Administration. As for buses and motorcoaches coming into the United States 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, November 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, February 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 United States 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, April 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 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 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 2 months, will find regarding the increased data quality and accuracy of SafeStat to identify risk-prone long-haul motor carriers operating throughout the United States. 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 fiscal year 2008 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, October 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 United States 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 8 hours per day that, as far as we can determine on the basis of anecdotal evidence, is not enforced.

Even if commercial drivers with Licencias Federal de Conductor operate in the United States 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 8-day tour of duty and driving hours by 28 percent over the same time span. Commercial drivers can now work 98 hours in 8 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 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 onboard 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, Public Law 104–88, 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 (April 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 (September 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 2 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 fiscal year 2007 and fiscal year 2008. 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 5 one-hundredths of 1 percent—0.05 percent—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 6 one-hundredths of 1 percent—0.06 percent.

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 United States 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 5 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 United States could be driven into the United States 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.

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. Section 4007 of Transportation Equity Act for the Twenty-First Century (TEA–21), codified at 49 U.S.C. § 31315(c), established the template for all pilot programs conducted by DOT. 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 3 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

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 2 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 United States 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. Seventy-five 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.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION—NOMINATON HEARING, SEPTEMBER 20, 2006

NOMINATION OF MARY E. PETERS

Senator STEVENS. The committee will come to order.

The Chairman would agree that it would be proper to allow time for the two Senators from Arizona to introduce the nominee. Senator McCain, you're the senior Senator.

Senator MCCAIN. Thanks very much. I remind Senator Kyl of that daily.

Well, thank you.

It's with great pleasure, Mr. Chairman, I introduce to the committee Mary Peters, who has 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 4 years of service as the Administrator of the Federal Highway Administration from 2001 to 2005. She's a fourth-generation Arizonan, was the 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 firsthand transportation agency experience during her service at the Arizona Department of Transportation, and another 4 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 that 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 for recess.

And I thank you for allowing me to make this statement on her behalf.

Senator STEVENS. Senator Kyl?

Senator KYL. Thank you. Mr. Chairman, first let me agree with my colleague Senator McCain that it would be very much in the best interests 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 at 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, for 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 the 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 person of great integrity and charisma, and I'm very proud to call her a friend and commend her to the committee.

Senator STEVENS. Well, thank you very much, Senator.

I would suggest that the nominee present her statement, then we'll go around and give Senators an opportunity to question the nominee.

Ms. Peters?

Ms. PETERS. Mr. Chairman, thanks so much.

Chairman Stevens, Co-Chairman Inouye, and members of the committee, it is an absolute honor to 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. My husband is home today; however, he is with our two brand-new grandchildren. One got out of the hospital 8 days ago, one got out of the hospital 2 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.

Ms. PETERS. But I know that they are with me in spirit here today.

And my grandchildren have asked me to say their names. Jeremy, Jenna, Charles, Shannah, and Daniel, I love you.

Thank you, Senators.

Senator STEVENS. Now, are there any of your family with you today?

Ms. PETERS. No, sir, they are not here.

Senator 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 a 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 3 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 4 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 the Federal Highway Administration 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 programs.

If confirmed, a significant priority will be the reauthorization of the Nation's aviation programs. 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. Intercity 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.

Senator STEVENS. Well, thank you very much, Ms. Peters.

I think we'll have a round of questions, as I said. We'll limit the first round to 5 minutes. I expect that almost every member will come. We'll see how much time we'll take.

Let me start off by saying, you know, 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 that small isolated areas would continue to get air service, where needed, was the Essential Air Service program. There have 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. 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.

Senator STEVENS. Well, thank you very much.

We're also looking at two concepts. One is the next-generation air transport system, and the other is a joint planning and development office for that system. Are you familiar with the background of what we've done so far on that approach to that new system?

Ms. PETERS. Mr. Chairman, yes, I have had the opportunity to be briefed by 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 and Department of Defense, as well as NASA, would be very important in that regard.

Senator STEVENS. Well, I appreciate that. We've got an enormous problem with these new 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 that they'll consume about 35 percent of the fuel of the existing planes of that size, 9 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 executives. Have you looked at that problem and reached any conclusion on how to handle the enormous number of new planes that are going to enter the system?

Ms. PETERS. Mr. Chairman, I am aware of the issue, and aware of the incidence—the higher incidence of these planes in the aviation fleet. I have not yet reached any conclusions as to the impacts 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.

Senator STEVENS. Well, thank you very much.

Our co-chairman is here now. Senator, I did not make an opening statement. We just went right into Ms. Peters' statement. And I would call on you for any questions or comments you might have.

Senator INOUYE. Well, I'd just like to congratulate the nominee.

Ms. PETERS. Thank you, Senator.

Senator INOUYE. I had the great honor and privilege of meeting her yesterday. And I'm supporting her.

Ms. PETERS. Thank you, sir.

Senator INOUYE. That's my statement.

Senator STEVENS. Thank you very much.

Then we will go by the early bird rule here. The staff tells me the next person who entered the room was Senator Lott.

Senator LOTT. Thank you, Mr. Chairman. And thank you for having an expeditious hearing on this nominee. And congratulations, Ms. Peters, on——

Ms. PETERS. Thank you.

Senator LOTT [continuing]. Being nominated by the President to this very important position as Secretary of Transportation.

Ms. PETERS. Thank you.

Senator 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 may not have been involved in in the past. But let me just say that, 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 have so much we have to do there. Next year, we have the reauthorization of the FAA coming up. We have an air traffic control system that is just not up to the standards that we're going to have to have.

We have had improvements in railroads, the 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 these areas. As a member of the Finance Committee, we have a tax incentive proposal to greatly encourage the freight railroads to expand their capacity. We're going to keep pushing on Amtrak until we get a reform. And so on down the list.

So, as our new Secretary of Transportation, 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 is never a better dollar spent, other than for defense, than the money we spend on lanes, planes, trains, ports, and harbors. So, I hope that you will provide real leadership in this area.

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

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 on time 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.

Senator 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 of these areas—in trains, in planes, and also in the highways. And we had a significant portion of the highway bill that had safety proposals in it. We actually changed our approach to states on seatbelts, for instance. And instead of trying to punish them or threaten them or beat them into submission, we gave them incentives, that if you pass the comprehensive seatbelt laws, 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 6 months did it. And we've seen, already, an improvement in our statistics with regard to seatbelt 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 child safety and some of the rearview activities and how kids accidentally can knock cars out of park and have them roll forward and kill 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's 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 his or her life in an automobile crash because they were not properly buckled in or in a child restraint seat.

Senator LOTT. Thank you, Mr. Chairman.

Senator STEVENS. Senator Dorgan is next.

Senator DORGAN. 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.

And 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 and Dickinson, to Denver, and that contract—they had attempted to have a third flight a day when it was reauthorized a few years ago. Since that time, there has been substantial activity in the oil patch, and our region has increased ridership over 23 percent in one city, and 12 percent in another. And 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, whom you succeeded, once 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 States. 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 a 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 at—in our state, as well, at the Bismarck Commerce Center.

But, having said all of that, I—you know, Mr. Chairman, we have a lot of nominees that come to 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 much 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 interests 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.

Senator STEVENS. Well, for the interest of the members, Senator Inouye has just consented that we'll have a vote 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 nominee's name for consideration by the Senate.

Senator Rockefeller?

Senator ROCKEFELLER. 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.]

Senator ROCKEFELLER. And, I think, for—I think, for very, very good reason. You came to see me. We had a—we had a very good talk. We discussed a number of issues. But the thing that struck me most about you is your openness, your—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 plainspoken in the way you do it. So, I just—I want to praise you, and the President in his selection of you——

Ms. PETERS. Thank you.

Senator ROCKEFELLER [continuing]. Because I think you're—I think you're going to be terrific. And I agree with what Senator Dorgan said about the transportation background. That's important.

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, and it's a very—it's a very simple thing. Staggers, who is a West Virginian—that Staggers Deregulation Act of 1984, everybody got deregulated if there were two lines going into a business, but the 20 percent who weren't didn't get deregulated. And that's—when he was referring to the STB—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. If his are 100 million, that means, probably, ours are more, because there are so many 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 been—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. Senator 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 certain 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 would be a special meeting that you call. I met with the head of one of the big railroads this morning, and he seemed 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 crossings. 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 costs involved and the safety involved—like you mentioned, the child with the seatbelt—well, this is, sort of, Americans with a seatbelt 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 is flat. Everything else is either going up or down. And so, that means that when you have as many chemicals as we do, up and down the Ohio, and then into the interior and the Kanawha River, so, it was really the foundation state for chemicals—and so, there'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 that 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—the Congress has consistently rejected cuts to airport construction funding. We ought to be redoing O'Hare Airport. I was there 2 days ago. I mean, 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.

Ms. PETERS. Yes.

Senator ROCKEFELLER. 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.

Ms. PETERS. Thank you, sir. Thank you, sir.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

Senator STEVENS. Thank you, Senator.

Next is Senator Burns.

Senator BURNS. Thank you, Mr. Chairman.

Ms. Peters, thank you very much, and congratulations on your nomination. And we're glad you're willing to serve.

Ms. PETERS. Thank you.

Senator 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—we had prior to 9/11. But the problem is, it's taking more airplanes to carry them. We've got our regional jets now, not big—not as big as airports, but making more frequent flights. I think that is—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, in the FAA, or wherever, we've got to make sure that the big and the small are considered, and to be at the table.

And as we 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 railways 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 Montana, and I think Senator Dorgan alluded to that for North Dakota a little while ago.

We've 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's—that is—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.

But one has to remember that it is in the law now, in section 10101, in title 49 of the U.S. Code—". . . it is 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, "to maintain reasonable rates where there is an absence of effective competition." We have to address that. And—because it's being reflected not only in our grain that we ship from the State of Montana to our ports, but the energy, the coal we ship from our—from ours that goes into—that goes into electricity. And, of course, ratepayers 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 can't—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, and along with our railroads, even our short lines and how we handle that.

And there are 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 down to the Department of Transportation.

Ms. PETERS. You've mentioned that, sir.

Senator 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 no—there's nobody who 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—and I look forward in 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, thank you very much for holding this hearing. And let's us get this—let's get this person in the seat that she deserves.

Ms. PETERS. Thank you, Senator.

Senator STEVENS. Well, thank you very much.

I have to amend the statement I made, because absent Senators may have questions for the record that you will need to answer, so we will delay the vote on your nomination. But we will meet off of the floor on the next vote after the questions have been answered.

Ms. PETERS. Thank you.

Senator STEVENS. They will be presented to you in writing by tomorrow at 10 o'clock.

Ms. PETERS. Thank you.

Senator STEVENS. Senator DeMint?

Senator DEMINT. Thank you, Mr. Chairman. And I want to express to you my full support for the nomination of Ms. Peters. I appreciate her courtesy in coming by my office. She has actually been to South Carolina to work on some innovative transportation solutions. 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.

Senator STEVENS. Thank you, Senator.

Senator Smith?

Senator SMITH. 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 to voting affirmatively for your confirmation.

As we spoke in my office about a range of issues from planes, trains, and automobiles, you've got a huge job. And I know you're up to it, both personally and professionally. You're a wonderful selection.

There are now reports coming out that the Highway Trust Fund will be out of money by, or short of money by 2008. Yet, Americans love to travel, and they particularly love their cars. We previously spoke of the I–5 Columbia River corridor that connects the States of Washington and Oregon, and the congestion is so bad there that by 2 in the afternoon it's a parking lot, and yet, it is a vital link for commerce and transportation in our country.

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'll look forward to that, sir.

Senator SMITH. I want to comment on the railroads. Obviously, part of alleviating congestion on our roads is investing in our rails. And the Federal Government has had a minimal role in investing in rails. On the Finance Committee we recently implemented a tax credit for the railroads to invest in rails, and we find, in the operation of that tax credit, that much of it was nullified by the AMT. The IRS is now coming out with a ruling further restricting it, and, therefore, frustrating the very unanimous—or near unanimous intent of Congress.

Anything you can do to help us come up with ideas for how we can obtain more investment in rails, both cross-country and short line, would be appreciated. It is critical to relieve congestion on our highways and to increase efficiency in our transportation means.

I would also throw in my support for Essential Air Service. Oregon has many rural places. It's a big State, geographically, and rural airports cannot be forgotten. I appreciate anything that you can do for those rural airports.

And I look forward to working with you on these issues.

Ms. PETERS. Thank you, Senator.

Senator SMITH. Thank you, Mr. Chairman.

Senator STEVENS. Thank you, Senator Smith.

Senator Lautenberg?

Senator LAUTENBERG. Thanks, Mr. Chairman. And greetings, 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 I've got a couple of questions to ask.

Ms. PETERS. Absolutely.

Senator LAUTENBERG. The fact of the matter is that, while we can't do much about the destruction that we get from extreme weather and other conditions beyond our control, we can do things to provide transportation. And I'd like to know that you're going to tackle all the problems that exist for every mode of transportation.

And so, let me start. Mr. Chairman, you will have full opening statements in the record, I assume? Yes, he said.

Mr. Chairman, you didn't object, right? OK.

You certainly have experience on the highway side of things, but future transportation needs of our country will not be met by highways alone. I've met with officials from the freight rail industry. And, you know, I'm very concerned about Amtrak, and listen with interest as other Senators from other parts of the country beside the Northeast have shown today a serious interest in seeing that Amtrak continues to operate and appropriate investments are being made to bring it up to date. This year, we're going to celebrate the 35th anniversary of Amtrak. But the budgets tell us the true story, that in a single year we spend more on highways than we've spent on Amtrak improvement over the last 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 in our national airspace for all the flights that we have—by reducing separations and limiting flights at certain airports. But I also note that there are shortages of air traffic controllers. At Newark, for instance, Federal Aviation Administrator Blakey has said we need 35 controllers for safe operations, but we're 15 percent 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 hurricanes, like 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 respond 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 come into the area.

Senator LAUTENBERG. I have a letter that you sent to Senator Kyl. It goes back a few years, but it is about the safety concerns with heavier, longer trucks. You wrote "rollovers and jack-knifings by trucks already"—this was, again 7 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?

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.

Senator LAUTENBERG. The principal thing for us is to make sure that we have this balanced highway system. And so, we've discussed shortages in FAA controllers, the search for more capacity in the airspace, on the freight rail lines, and dealing with the congestion and pollution that we now get from jammed highways. So, we have little choice. Senator Lott and I have a bill that's sponsored by many of our friends here to get Amtrak the Federal funding that would permit it to operate without having to go out there with a tin cup every time they need something. So, I'm hoping, Ms. Peters, that you will join us in that quest to make sure that Amtrak gets the investment that it needs to bring our country's passenger railroad up to date.

Ms. PETERS. Senator, I look forward to working with you.

Senator LAUTENBERG. Thanks.

Mr. Chairman, are we going to have another 5-minute round?

Senator STEVENS. Yes.

Senator LAUTENBERG. Thank you.

Senator STEVENS. Senator Pryor?

Senator PRYOR. 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.

Senator PRYOR. OK. I'd—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 and addressing the issue.

Senator 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? Would they have to pay all the same fees, the various registration, fuel taxes, those kind of things? Would 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's 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 locks and dams on our rivers. You know, we can go through a long list of our needs. And I know part of your responsibility is to try to address all those things. And I know you've given that 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 incidence 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.

Senator PRYOR. Does—would that include toll roads?

Ms. PETERS. It could very well, sir, yes.

Senator 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 improvement 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.

Senator PRYOR. Thank you.

Thank you, Mr. Chairman.

Senator STEVENS. Senator Snowe?

Senator SNOWE. Thank you, Mr. Chairman.

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 are going to 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 also to, I think, the national transportation policy. But obviously as we look to the future, one of the concerns that I had, and I've expressed, is making sure that, you know, 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, you know, customer satisfaction rate, because of the outstanding services provided to the people of Maine and the vicinity. It's worked 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 the Congestion Mitigation and Air Quality funds for that purpose, and that will expire in 2009. Can you state for this committee what your views are with respect to the use—the flexibility using Federal transportation funds for this purpose? Because that certainly has contributed to the success for the *Downeaster,* the extension of 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 exercise 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.

Senator SNOWE. Well, I appreciate that, because I think that it is—I think it's going to be critical. You know, I happen to believe in—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 striven for in this committee over the years. But, nevertheless, I think it's so vital and central to our overall transportation policy.

Second, 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, or Essential 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 of—by these plans—and certainly the most recent, focused 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—a loss of seats and overall—both in terms of flights and seats in passenger service—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 the overall plans for the future.

Ms. PETERS. Senator Snowe, I do think it's essential to have air service into our rural areas. You know, it's been over 25 years since deregulation of the aviation industry, and we—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.

Senator SNOWE. Well, I appreciate that. And I hope you will give that consideration, 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, you know, community cost-sharing between the Federal Government—in some cases as much as 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 in—it's obvious it's going to have a paramount impact on them if they have to—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, half 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.

Senator SNOWE. I appreciate that. Thank you.

Thank you, Mr. Chairman.

Senator STEVENS. Thank you.

Ms. Peters, I'm told that while you were reading your opening statement this committee finally received clearance 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 1 out of 11 pilots were being killed in aircraft accidents, and we have the highest number of pilots per capita in the country. We developed what we called the Five Star Medallion Program, with the help of the Department of Commerce and FAA, and we have reduced significantly pilot deaths and increased safety in our State.

I want to know if you're willing 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 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.

Senator STEVENS. I look forward to showing you a little bit of my marine research capabilities, too.

Ms. PETERS. Ah. I'll look forward to that, sir.

Senator STEVENS. 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 need a financing option that pulls 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 is in highways. And so, all I can say is, is that we have an increasing number of fatalities on our highways. I think if we can't reverse that any other way, we're going to have to restore the speed limits on interstate highways. We have to find some way to reduce those deaths.

Ms. PETERS. Yes.

Senator STEVENS. And each year they're going up. So, I would hope that we would have a chance also to work with you on that, particularly with regard to the fatalities on our interstate highways.

Ms. PETERS. Mr. Chairman, you have my commitment to do so. There is no higher priority at USDOT than reducing the number of deaths and injuries that occur on our Nation's highways every year.

Senator STEVENS. Yes. I was appalled at some of the statistics I saw today as we prepared for this hearing, and that is an alarming rate of increase.

Let me now turn to Senator Lautenberg.

Senator LAUTENBERG. Thanks, Mr. Chairman.

Ms. Peters, you struck a note of alarm with me, which passed because I ran out of time, but to say that you were looking at the opportunity in—for areas where truck size and weight standards could be changed, so long as 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—and 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 truck weights—the size and the weights. Isn't that 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 miscommunicated on that. What I was referring to is that some States are considering proposals for truck-only lanes, lanes where trucks might be segregated from the rest of the traffic, with deeper pavement depths, deeper pavements that would withstand the weight of a truck better. If traffic could be segregated as in those weight proposals—which some States are considering now—that is what I was referring to. I was not referring to lifting the "Longer Combination Vehicle" freeze or the truck size and weight limits. The position that I took in that letter, back 7 years ago to Senator Kyl, remains my position.

Senator LAUTENBERG. OK. I just wanted to be sure that we're on the same truck length, as they say.

And 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. U.S. airlines 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 to—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 I 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.

Senator 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——

Ms. PETERS. Yes.

Senator LAUTENBERG [continuing]. So that we can increase the capacity to allow enough trains to go through there. 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 project. That's a project of national interest, even though the tunnel is between New York and New Jersey, because right now it is the biggest bottleneck on the entire Northeast Corridor from here to Boston. And 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.

Senator 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.

Senator LAUTENBERG. Do you always wear a helmet?

Ms. PETERS. I never ride without a helmet, sir.

Senator LAUTENBERG. I just wanted to be sure, because—everybody—I would buy you one, if you didn't have one.

Because I had a ski accident a couple of years ago on my skis. The helmet that I was wearing was 2 days old, and I've 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.

Thank you very much, Ms. Peters. I look forward to working with you.

Ms. PETERS. Thank you, Senator.

Senator STEVENS. A bike rider, huh?

Ms. PETERS. Yes, sir, an avid motorcyclist. In fact, I own two.

Senator STEVENS. You've got another one down there at the White House, in Josh Bolten. Now we understand why you move so quickly.

Senator STEVENS. We thank you very much. As I said, there are some absent Senators and we have agreed that they will have until 10 o'clock tomorrow morning to file questions. As soon as those answers are received, 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.

We do thank you very much for your appearance today, and I think you've been very frank to all these people. You've made some promises that I'm not sure you can keep, but that's all right.

Senator LAUTENBERG. I'll be hanging over there, Mr. Chairman.

Senator STEVENS. I understand. We do have a fairly bipartisan approach to many issues, particularly in transportation here in this committee. I look forward to working with you, along with our co-chairman and members on both sides of the aisle. You have a grand assignment. It's a very difficult one. We wish you very well.

Ms. PETERS. Thank you so much, sir.

Senator STEVENS. Thank you. The Committee is adjourned.

[From the New York Times, December 10, 2006]

MAKING THE HIGHWAYS LESS SAFE

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 6 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 7 days, and to 88 hours from 70 over 8 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.

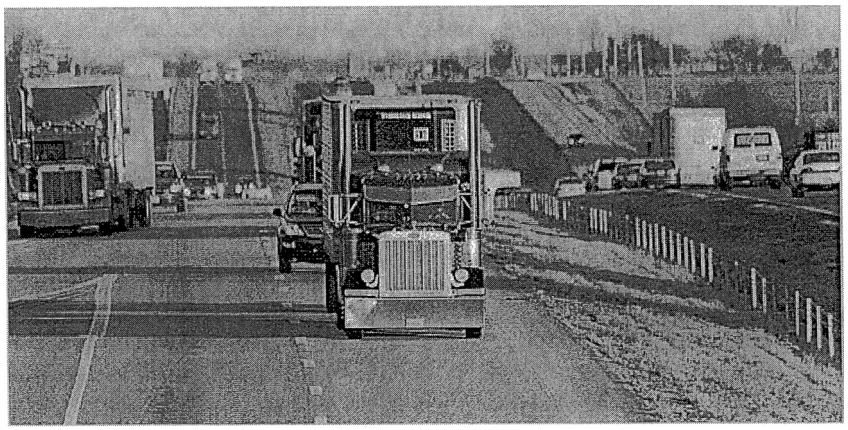
[From the New York Times, December 3, 2006]

AS TRUCKING RULES ARE EASED, A DEBATE ON SAFETY INTENSIFIES

(Byline: By Stephen Labaton; Ron Nixon contributed reporting.)

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.

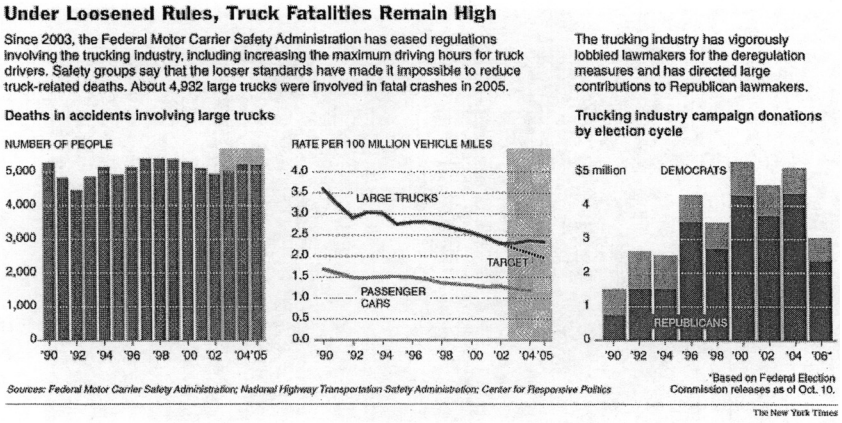
In the course of pursuing its case, the family broached a larger issue: whether the Bush administration's decision to reject tighter industry regulation and instead reduce what officials viewed as cumbersome rules permitted a poorly trained trucker to stay behind the wheel, alone, instead of resting 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.



In the last 6 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 6 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 7 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, 5 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 FAA 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."

[From the Dallas Morning News, December 12, 2006]

DRIVERS BYPASS WEIGH STATIONS; LOBBYISTS HELP KEEP IT LEGAL

(Byline: Steve Mcgonigle)

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 contributed 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 2 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 5-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.

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 because 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, DC, 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 6 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 the 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 supporters 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."

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 Beverage Alliance of the Texas Package Stores Association.	Austin	liquor	189,975
ROAD CONSTRUCTION:			
James D. Pitcock	Houston	CEO, Williams Brothers Construction Co.	904,250
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 Produce Association	Mission	fruits, vegetables	28,050
RETAILERS:			
Alice Walton	Mineral Wells	heiress, Wal-Mart Stores Inc.	660,000
Wal-Mart Stores Inc.	Bentonville, AR	retail	324,585
Home Depot Inc.	Washington, DC	retail	37,169

TRANSPORTATION-RELATED POLITICAL CONTRIBUTIONS—Continued

[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
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	grocery 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, DC	freight hauler	935,144
Burlington Northern Santa Fe Railway	Washington, DC	freight hauler	592,490
LABOR UNIONS:			
International Brotherhood of Teamsters	Washington, DC	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, DC	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.

[From the Dallas Morning News, December 11, 2006]

TRUCKERS' LONG HOURS, HIGH STRESS TAKE TOLL

INDUSTRY'S PRESSURES LEAD MANY DRIVERS TO AN EARLY GRAVE WHILE ENDANGERING OTHERS ON THE ROAD

(Byline: Jennifer Lafleur)

Truck driving is one of the country's most dangerous jobs, with tens of thousands of injuries and hundreds of deaths each year.

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 4 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, 6 weeks before his 62nd birthday, was the second among a group of 4 truckers—friends since they started driving together more than 30 years earlier. Within 5 years, 3 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 5 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."

[From the Dallas Morning News, September 19, 2006]

REVIEWS MAKE ROADS SAFER BUT RARELY HAPPEN

(Byline: Steve Mcgonigle, Jennifer Lafleur, Gregg Jones and Holly Becka)

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 4 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 1 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.

Captain 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.

Captain 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 7 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 5-year moratorium on new State funding for more truck safety troopers.

State Representative 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."

[From the Dallas Morning News, September 17, 2006]

TXI TRUCKS INVOLVED IN 31 ACCIDENTS OVER THE LAST 2 YEARS

(Byline: Gregg Jones, Holly Becka, Jennifer Lafleur and Steve Mcgonigle)

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 2 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 2 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 noncompliance 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.

[From the Dallas Morning News, September 18, 2006]

IN WISE COUNTY, TRUCK ACCIDENTS KILLED 56 PEOPLE IN 6 YEARS

(Byline: Holly Becka, Gregg Jones, Jennifer Lafleur and Steve Mcgonigle)

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 2 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 5 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 8-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 2 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."

[From the 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 1 year after prescribed

by the Secretary or, for good cause shown, later than 1 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 [1].—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.).

INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991

Minimum Training Requirements for Operators and for Training Instructors of Multiple Trailer Combination Vehicles [2].—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 2 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.

Training for Entry-Level Drivers of Commercial Motor Vehicles [3].—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 stand-

[1] 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.

[2] 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.

[3] 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.

ards 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.

HAZARDOUS MATERIALS TRANSPORTATION AUTHORIZATION ACT OF 1994

Safety Performance History of New Drivers[4].—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, section 4117. See, the entry below on this regulatory topic in the section on motor carrier provisions enacted in SAFETEA–LU.

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

[4] 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.

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 2½ 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.—Section 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 6 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 2½ 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 United States 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 1-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 9 to 15 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 9 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 1 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 section 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 United States 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 parts 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 9 to 15 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 2½ 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 United States. 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 United States or are expected to operate in the United States, 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 pro-

posed 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, part 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.).

Senator MURRAY. Thank you very much.

Senator Bond has to leave for another committee hearing, would you like to make a final comment or ask any questions?

Senator BOND. Thank you, Madame Chair, I will submit some questions for the record. I think that, I appreciate the testimony of the witnesses and we will review that and the answers to the questions for the record.

Thank you.

Senator MURRAY. Thank you very much.

Ms. Claybrook, let me start with you—in your testimony you asserted that the administration is misusing the demonstration project by showcasing the best Mexican carriers as a way to expedite opening the southern border, I think you heard some of those concerns from us as well. I want you to put on your hat as the former NHTSA Administrator, and tell us what you think the three or four elements are that are essential for a successful demonstration program, that doesn't have a pre-ordained outcome?

Ms. CLAYBROOK. Well, first of all, there has to be an indication of what the definition of "success" is. What is the outcome that the Department would expect from such a project? And what is a pass/fail grade, if you would?

Second, there should be a methodology for what they're doing, and there's no methodology that's been made available.

There's also a knee-down to the law, which I think would enhance the likelihood of it being useful, which is a public comment, notice of public comment period—that's required by the law, under the DOT law, for every pilot project. Calling it a demonstration project does not make it any different than a pilot project. It is a pilot project. You can change the name, but you don't change the stripes.

And, so we think that there ought to be a clear, defined program that, everyone ought to understand it, everyone ought to have a chance to comment on it. And that you ought to know what the opportunities for success are. We don't even know, in this case, how many trucks are going to be involved. And, so we don't know what kind of statistical analysis they're going to do, we don't know the extent to which the States are actually going to find the—out of the service provision in the, that are—that these trucks must meet—a number of the States don't even indicate, as you said in the appropriations, the budget document, they're only expecting 25 to 30 States to actually be enforcing the law—how, what statistical analysis can you make in this case?

Senator MURRAY. What kind of a timeline do you think a pilot project or demonstration project ought to have in order to be successful?

Ms. CLAYBROOK. I think it ought to be a 3-year time, and that's the time that's spelled out in the DOT for, generally, these kind of projects, are 3 years. And, if you don't have that, you just do not have the opportunity to do the kind of evaluation and analysis that needs to be done.

Senator MURRAY. Thank you very much. Mr. Parfrey, in your testimony you stated that the competence of the United States to enforce the cabotage restriction is virtually non-existent. You're saying we have no ability to keep Mexican drivers from hauling domestic shipments between U.S. cities once they cross the border. Based on the testimony you heard this morning, are you satisfied that the United States has the capacity to enforce cabotage restrictions?

Mr. PARFREY. No, I am not. I don't believe that we have officers trained, I heard this morning that there, officers have been trained for putting drivers out-of-service for safety violations, I did not hear anything about enforcing the operating authorities, and identifying whether this is intra-U.S. movement or not.

We can't even enforce the cabotage rules of the Canadian carriers, how are we going to do it with the Mexican drivers?

Senator MURRAY. Mr. Ficker, your association represents a very critical component of our Nation's economy, it depends on our transportation network to get Americans the products that we buy and sell, in your testimony that was submitted to us, you did raise some concerns about whether that transportation network has sufficient capacity to handle the growing volumes of freight that need to be moved across the country. How would you rank the challenge presented by the drayage system as far as the hindrances on overall freight mobility?

Mr. FICKER. Thank you, Madame Chairman.

It creates inefficiencies, and actually underutilizes the available capacity out there. If a vehicle is leaving Mexico and he's been preordained to be safe and efficient and effective, he can take the load to wherever it needs to go in the United States, and save the one, two, and three handoff kinds of activities that were referred to by Mr. Worthington, in his testimony earlier.

We believe that efficiency and effectiveness and safety go hand in hand. And, if you have something that's moving efficiently, it will move safely as well. We have no interest at all in anything moving unsafe. We see right now a system that was set up years ago, in a different environment when the economics and the economies of our countries, both north and south of the border, did not have the same amount of volume that we're currently moving today. We have to move it efficiently.

We are—in my opinion, and the opinion of our organization—facing a crisis of transportation in this country. We have been growing vehicle miles substantially, while growing our lane miles very unsubstantially. The projections are as much as 25 percent growth in vehicle miles over the last 20 years, and about 3 to 4 percent growth in lane miles. At some point in time, we're just going to run out of rabbits to pull out of the hat. This is one small element of helping deal with that impending crisis.

Senator MURRAY. What about the shortage of drivers? We've heard from some people there's a shortage of U.S. truck drivers,

others there's a shortage of Mexican drivers—I'd actually like every member of the panel to comment on the shortage of drivers in the industry, and how opening the border could affect that.

Mr. Hoffa, I'll go to you, and go back around. Do you have a comment on that?

Mr. HOFFA. What was that?

Senator MURRAY. Shortage of drivers. Some people say there's a shortage of U.S. drivers, some said there's a shortage of Mexican drivers, how will opening up the border affect that?

Mr. HOFFA. Well, right now, obviously all of the traffic coming out of Mexico, when it goes through the commercial zone is being handled. And, if we leave the present system, which is safe, which meets all of the standards, whatever has to be done will be done because of the economy, and people, new drivers would come on. We don't detect that.

The danger, what I hear, is this talk about efficiency. And it basically is, we're going to sacrifice the safety of our highways for some efficiency of an unsafe Mexican truck, you know, leaving the heart of Mexico and coming across with very little protection for American drivers. I don't see the problem with regard to the supply of drivers.

Senator MURRAY. Mr. Worthington.

Mr. WORTHINGTON. Every commentator that I've heard also agrees that there is a shortage of drivers in the United States, we anticipate that shortage to increase. But, implementing this provision, enables us to drive some efficiency through the system. And it's not just, you know, our border with Mexico, our border with Canada, the efficiency that we have driven out of that border crossing has helped alleviate the drivers on our north side.

Senator MURRAY. Anybody else who'd like to comment?

Mr. FICKER. Madame Chair, if I could.

It has been projected by AASHTO, again, and we have in their freight bottom line report, there is a significant shortage of truck drivers in this country right now. Driver turnover is substantial. We have—I have personally heard projections from major trucking companies in the United States of driver turnover of 130 percent, or more. That's substantial.

And, you have an aging population of truck drivers. I believe it's estimated, and Mr. Hoffa can verify this for us, that the average age of the truck driver in this country is between 50 and 55. And, where is the next generation of truck drivers coming from? Where are we going to do this?

I am not a proponent at all of inflicting and putting in foreign truck drivers in this country. However, we have to address the issue of sufficient workforce to move the commerce of our country, if our commerce continues to grow at a 3 to 4 percent rate a year.

Senator MURRAY. Mr. Parfrey.

Mr. PARFREY. I—certainly there's a shortage of compensation for truck drivers. But how can more than 120 percent turnover of American drivers equate to, for American companies—equate to a truck driver shortage? I'm not, I don't see the shortage.

Senator MURRAY. Okay, thank you.

Joan Claybrook.

Ms. CLAYBROOK. Thank you, Madame Chairman.

The reason there's such a shortage of truck drivers is because the working conditions are terrible for so many drivers. They don't get paid overtime, they have to work no less than 80 hours a week under the hours-of-service rules, they get paid by the mile, not by the hour, so they're encouraged to drive as fast as possible to achieve as many hours as possible, they keep two sets of books, they don't have an electronic system, so they keep comic books, and the reason they do is so that they cheat. And that's the problem. It's a terrible life when you do long-distance driving, for most people, you don't get home at night, and you're exhausted, you've worked many, many, many hours, too many hours, and I don't think anyone in this room could work the hours that most truck drivers do.

Senator MURRAY. Thank you, I'm going to allow Senator Lautenberg to ask questions, and I'll come back again to the panel.

Senator LAUTENBERG. Thanks, Madame Chairman.

Mr. Worthington, your company has operations now in Mexico, as I understand it?

Mr. WORTHINGTON. It's a logistics company, yes sir.

Senator LAUTENBERG. Yeah, what's the difference in hourly rate that you pay those, the people who are south of the border, and those that you pay within our country?

Mr. WORTHINGTON. Our company south of the border, is a logistics company and just employs management people. So, I mean, that's—we don't employ truck drivers.

Senator LAUTENBERG. Just management people.

Mr. WORTHINGTON. Yes, sir.

Senator LAUTENBERG. So, how do they supervise the requirements?

Mr. WORTHINGTON. It's a sales, logistics organization, south of the border.

Senator LAUTENBERG. We've—do you have an idea what the average wage might be down there? Do your people know that?

Mr. WORTHINGTON. No, sir I don't. I mean, are you talking about truck drivers?

Senator LAUTENBERG. Yes.

Mr. WORTHINGTON. No, sir, I don't.

Senator LAUTENBERG. Mr. Hoffa, do you have any idea?

Mr. HOFFA. I know that they are very, very poorly paid, and one of the biggest concerns I have is, when they come across the border, are they going to be subject to our wage and hour law? Now, supposedly, the DOT is saying they are—how would they possibly police that? How would they, basically, police the number of hours worked? You know, they're not going to monitor that, and there's just no way that we can know what these people are compensated. And the checks are going to be cut in Mexico for these drivers. How do we know, and how do we monitor what they're being paid? Especially with regard to as compared to what American drivers make.

Senator LAUTENBERG. There's been some press attention in the New Jersey papers about truck stops, and that there are too few, and that the drivers are forced—out of fatigue—to pull up where they can, and get some rest. Now, if that is the case, if it's difficult for our American drivers to find places to stop, now we have people who are less familiar with our highways and how are they going

to accommodate themselves. What about the enforcement now of hours-of-service.

Ms. Claybrook, what do you think about the enforcement of hours-of-service now in our trucking——

Ms. CLAYBROOK. It's a joke.

Senator LAUTENBERG. In our trucking responsibility.

Ms. CLAYBROOK. It's a joke. And I think that's what the drivers call it. They call their record-keeping systems "comic books," there are no electronic on-board recorders, virtually, anyplace, even though they're throughout all Europe trucking. We've known how to do this for years, there have been about five different rule-making activities going on at the Department of Transportation, court cases about it, and we still don't have electronic on-board recorders. And, the reason that we don't, is because no one wants to have the real story told—either to the police, or for taxes—and so our drivers are driving these enormous numbers of hours, low pay, terrible working conditions.

Senator LAUTENBERG. Thank you.

Ms. CLAYBROOK. Driving a truck is horrible, it's a tough thing.

Senator LAUTENBERG. What do you think the consequence of having Mexican truck drivers being limited to hours-of-service on our roads, do you think that could possibly be enforced in any serious way?

Ms. CLAYBROOK. No, it's a bigger joke. Because they have long hours they've got to drive to get to the border, and then they're not going to just sleep when they get there.

Senator LAUTENBERG. Well, we in New Jersey, unfortunately, we're the, was the location for a terrible truck accident which a truck ran into the back of a family in an SUV and killed those people, and since the load was bricks, the truck then fell sideways, and also killed another person with the load.

What they found is that there's substantial falsification of hours of service, hours that the individual was driving. I mean, if that happens within our own population, it strikes me as being almost impossible to be able to do that.

Mr. Parfrey, I know that independent truckers, very often, because they want to make a living, and they have a little bit less supervision, they want to get home—I think that this is not an uncommon condition, and I'm not sure how it gets corrected, and no suggestion that the independent drivers do it more than anybody else, but the question is, how do you manage to protect the Americans on the road, in their vehicles from being punished by drivers who don't have the familiarity, don't have the same interests, in my view, because they are recruited from people who will work for much less per hour, and it's hard to do the vetting that you would like to do.

So, my concern, Madame Chairman is the safety issue. Listen, if we need more drivers, we need only to look for comparison to what happened to TSA when at one point they had 200 percent turnover, but we got on it here, and made the wages a more realistic part of the deal, and the turnover dropped from 200 percent down to 20 percent. It's still a very tough job, and it's hard to get people who are willing to work in those kind of conditions, they're tough, but we now have a pretty much, a good work crew with reliability and

so forth, and the same thing has to happen, I would assume, Mr. Ficker, with the turnover problem that you talk about in the industry. I think you pay more, you get more, is the usual standard.

Thanks very much, Madame Chairman.

Mr. PARFREY. Madame Chair, can I make a comment?

Senator MURRAY. Yes.

Mr. PARFREY. First of all, a comment on Ms. Claybrook's comment that truck driving is a terrible job. Truck driving is a way of life. Truck driving is a way of life, either you like it, or you don't. It is not a terrible job, it is a good job, I did it for 10 years myself, and I enjoyed every minute of it. I chose to do something else in the industry. Had I not chose to do that, I would still be in the truck today.

Ms. CLAYBROOK. I said it was a terribly tough job, tough job.

Mr. PARFREY. Well, I heard you say terrible job.

Ms. CLAYBROOK. I said it's a terribly tough job.

Mr. PARFREY. Well, irregardless, it doesn't matter.

Ms. CLAYBROOK. Do you not think it's a tough job?

Mr. PARFREY. It is a tough job, but I didn't hear you say tough job, I heard you say terrible job.

Mr. HOFFA. Let me just say this, with regard to union drivers, there isn't 123 percent, our people work every day, and there isn't a turnover, they like their jobs, they're well-paid, they're regulated, and when they have a problem, they can file a grievance, and they have somebody to go to. The Mexican drivers don't have unions, and when they are told to drive somewhere, they have to, or they'll be fired, and it's just that simple.

Mr. PARFREY. If you cannot get officers trained in this country today to know how to read log books and understand the safety things in this country, and read the laws within a State or within this country, how in the world are you going to get them to understand the Mexican truck side of this thing, and the safety there? And how to read their log books. They can't even do it for the people in our own country.

Senator MURRAY. Okay, thank you.

Mr. PARFREY. We don't need more trucks on the road.

Senator MURRAY. Thank you, Mr. Parfrey.

Thank you, Senator Lautenberg.

I just have a couple more questions, and then I will submit some to all of you for the record as well.

But, Mr. Worthington, I wanted to ask you, here you heard Secretary Peters talk about the discrepancy between Mexican trucks going into the United States and the U.S. trucks going into Mexico, and the 6-month lag for U.S. trucks. Do you have a comment on that? Or a concern?

Mr. WORTHINGTON. As I mentioned in my testimony, we have, you know, concerns, we look forward to reviewing that application process, and hope that when we have a chance to review it that it is clear, and transparent. We want a level playing field.

Senator MURRAY. How will we know, since this is just a 1-year pilot project that trucks are getting access equally?

Mr. WORTHINGTON. Mexican trucks?

Senator MURRAY. And U.S. trucks, yes.

Mr. WORTHINGTON. I'm sure there will——

Senator MURRAY. You know, there's a fair playing field, since it's going to be 6 months before U.S. trucks are allowed into Mexico, we'll just have a few months to evaluate, what should we be looking for?

Mr. WORTHINGTON. The United States Department of Transportation is going to vet those applications, and I trust they'll do a good job.

Senator MURRAY. Mr. Hoffa, a question for you, in your testimony, you talked about a very poor assessment of a system in Mexico that produces drivers who are overworked and underpaid, we've heard you comment about that.

But you also raised a concern which this committee tried to address several years ago on section 350 relating to drug and alcohol testing? I would like to ask you, what measures you think should be put into place to be sure that Mexican drivers have met the same drug and alcohol testing requirements as United States drivers?

Mr. HOFFA. Well, I think it's, you know, we know what our rules are here. If you get a CDL and you're a driver here in the United States, you have to have a physical, you have to have a driving test, a written test, you have to be, you have to have a drug test. I'm amazed the testimony that I hear today—that we hear today, we heard today—that there are no labs in Mexico. And then they're saying that they're going to take—what, the specimen? That they take in Mexico, and they're going to send it to a lab up here? And obviously, it raises the chain of custody, which is the biggest issue—who's specimen is it? And we're sending those from somewhere deep in the heart of Mexico to some lab in the United States, what are we, overnighting it back and forth? What about the physical? What doctors are going to be doing those physicals in Mexico?

I think the testimony today here from the Chairman and the Inspector General was very disturbing, that after 15 years, they don't have a lab to do tests that was acceptable to us. So, what I think is, that, you know, the pressure is really on the Mexican Government, they have failed miserably, they talk about NAFTA, they say we ought to open the borders, but where have they been for 15 years? They couldn't establish a lab, they couldn't put a computer in, they couldn't get a series of clinics to do certifiable tests or physicals? That couldn't be done in 15 years? Where have they been all of this time? And yet, they're the first ones knocking on our door saying, "Let us in, we want to drive all over the United States."

I think that the problem goes back to the Mexican Government that they have not overseen this, and now they're putting the pressure on the United States to say, "Open the borders, even though we don't meet those tests." I think when they do do what we have here, when they get labs down there that are certifiable, when they get doctors that are certifiable, where we can make sure that the specimen that they take is the right specimen, then we can look at this. I think right now it's clear that this is really a smoke and mirrors deal, this is the elephant's trunk into the tent, they're going to have a cream of the crop, maybe pick a couple hundred trucks to say, "Oh, look at these new trucks, we're all set." And it doesn't represent the 5 million trucks that come across our border.

I think that we should be disturbed by what we heard here today, not satisfied.

ADDITIONAL PREPARED STATEMENTS

Senator MURRAY. Well, thank you very much, and I really appreciate all of you taking your time, we do have your written testimony, we do have some additional questions from other members who we want to submit to you, and we'd ask that you get those back to us.

Also, a statement from the American Insurance Association and the U.S. Chamber of Commerce will be included for the record.

[The statements follow:]

PREPARED STATEMENT OF THE AMERICAN INSURANCE ASSOCIATION

Senators Murray and Bond, the American Insurance Association represents more than 400 insurers that provide nearly 30 percent of the commercial vehicle insurance in the United States. Many of these companies also have global operations.

AIA has long supported free trade agreements, including NAFTA. But for trade agreements to be perceived to be mutually beneficial, and hence maintain their public support, the public must feel that its safety is not jeopardized. Unfortunately, the recently declared "pilot test" in which Mexican motor carriers would be free to operate throughout the United States, raises many questions that should be answered before we are convinced that it does not jeopardize safety and public support for free trade. It would, for example, take only one tragic crash involving a Mexican truck, which is operating as part of the pilot test, to undermine the public's support for the transportation components of NAFTA and erode public support for international trade, in general.

IMPORTANT SAFETY CONCERNS REMAIN UNRESOLVED

While there has apparently been some improvement in narrowing the gap in safety between U.S. and Mexican motor carriers, the fact is that significant safety concerns continue. An out of service rate of 20 percent, as indicated in the U.S. Department of Transportation's own website materials, is not an acceptable level of performance. Should consumers be satisfied if their phones, TVs, furnaces, computers or lights didn't work every fifth time? Much less should we be tolerant of an out of service rate of 20 vehicles out of 100 vehicles stopped for inspections, because lives are directly at stake.

Specific questions abound. What is the effectiveness of the enforcement of hours of service, maintenance and other safety standards in Mexico? Are the safety standards themselves as high or higher than ours? How will our law enforcement personnel really know the hours that were driven by a foreigner driver before entry into the United States? Will they be forced to rely on notoriously incomplete, even falsified, paper logs? These are just a few of the many safety questions that should be answered before the pilot test is commenced.

SIGNIFICANT DATA ISSUES REMAIN

Even assuming safety levels are adequate, and there is no evidence to suggest they are, how will insurance underwriters gather necessary information to assess the much greater risk posed by foreign based vehicles enabled under the "pilot test" to now operate in downtown Washington, in mid-town Manhattan, on the freeways around Chicago and Los Angeles or on congested suburban side streets? Existing operations within the commercial zone involve far less hazard and risk than do operations throughout the United States. As a result, commercial zone experience does not provide sufficient data to assume the same level of safety will be maintained when the operations are national in scope.

Despite some improvements in data collected and shared by governments, insurance underwriters do not have ready access to the information they need to underwrite Mexican trucks, even though this is the same information they routinely need and use to underwrite U.S. motor carriers. When the human and economic stakes are so high, as they are for large trucks, insurers need to learn as much as they can about the risk so they can provide loss control services to reduce the risk and price it accurately. Adequate information to do so with regard to Mexican motor carriers is not available in a comparable way to that in the United States.

THE PILOT TEST RAISES MANY QUESTIONS

The recently announced "pilot test" was declared without a prior opportunity for stakeholders to discuss it. In any event, we have no idea as to how success or failure will be measured. Further, what if something tragic happens during the test, a multiple casualty crash, for example? Will the test be immediately suspended? Clearly, there are legitimate concerns that should be addressed if the "pilot test" is to serve as a legitimate test.

CONCLUSION

For all of these reasons, we support a thorough Congressional review of the "pilot test", and its suspension, until all legitimate safety, data and procedural questions are answered. Thank you.

PREPARED STATEMENT OF THE U.S. CHAMBER OF COMMERCE

The U.S. Chamber of Commerce is pleased to present this written testimony on the remarkable success of the U.S.-Mexico trade partnership and the costs imposed by the long delay in implementation of the cross-border trucking provisions of the North American Free Trade Agreement (NAFTA). The Chamber strongly supports the pilot project announced by U.S. Transportation Secretary Mary Peters on February 23, 2007, to allow trucks to operate across the U.S.-Mexico border in keeping with U.S. commitments.

In the Chamber's view, implementing the cross-border trucking provisions of NAFTA is long overdue. The recently announced pilot project is an important step to enhance North America's competitiveness, reduce congestion and pollution at the border, and promote economic growth. Questions about safety have been fully answered, and every truck entering the United States must meet every U.S. safety requirement.

Free and fair trade has played a key role in our Nation's economic growth and development since it was founded, and NAFTA played an important role in the accelerated economic growth our Nation has enjoyed since it entered into force in 1994. Trade between the United States and Mexico has nearly quadrupled from $81 billion in 1993 to $332 billion in 2006. The trucking industry is critical to this trade partnership since trucks transport over 80 percent of the value of our trade with Mexico.

However, beginning in 1995, the United States has failed to abide by its commitment under NAFTA to open the U.S.-Mexico border to cross-border trucking. The difficulties that stem from this barrier to trade should not be underestimated. Current rules maintain a cumbersome, environmentally damaging, and costly system that represents a brake on further growth in mutually beneficial commerce. The time has come for our countries to open our borders to a modern cargo transportation system that will allow our economic partnership to reach the next level of success.

THE STORY SO FAR

NAFTA gave U.S. and Mexican carriers the right to pick up and deliver international freight into the neighboring country's border states beginning in December 1995. This market access was scheduled to expand to the entire territory of the United States and Mexico by January 2000. The United States failed to comply with its commitments on both of these occasions.

NAFTA also included measures to permit U.S. and Mexican carriers to invest across the Rio Grande. Starting in December 1995, U.S. and Canadian investors were supposed to be allowed to invest in Mexican trucking companies or terminals providing exclusively international freight services up to a 49 percent ownership cap. NAFTA laid out a schedule to raise this cap to 51 percent in 2001 and 100 percent in 2004.

By the same token, Mexican carriers were to be allowed to invest and fully own U.S. trucking companies for the purpose of transporting international cargo within the United States beginning in 1995. The United States finally moved toward implementation of these provisions on June 5, 2001, when President George W. Bush issued a memorandum instructing the U.S. Department of Transportation to begin accepting and processing applications by Mexican nationals for the purpose of establishing U.S. trucking companies.

A NAFTA dispute settlement panel in February 2001 determined that the United States had violated its obligations on cross-border trucking. At the time, analysts calculated that the United States could be slapped with retaliatory duties totaling

between $1 billion and $2 billion for every year Washington refuses to allow cross-border trucking.

In 2004, the attorneys general for California, Arizona, Oklahoma, Massachusetts, Illinois, New Mexico, Oregon, Washington and Wisconsin filed briefs with the Supreme Court, opposing the administration's effort to open U.S. roads to Mexican trucks and asserting that air-quality reviews must precede any such move under the Clean Air Act. Noting that Mexican trucks would be subject to all U.S. environmental and safety regulations in any event, the administration argued that extensive delays and higher costs could result if such additional reviews were required. The Supreme Court agreed with the administration.

CROSS-BORDER TRUCKING

In the Chamber's view, the dispute over cross-border trucking has threatened our relationship with Mexico, our second-largest export market. Cross-border trucking today was described in a coalition letter signed by the U.S. Chamber of Commerce and other business organizations as "archaic and convoluted. . . . Currently, a shipment traveling from the United States to Mexico, or vice versa, requires no less than three drivers and three tractors to perform a single international freight movement. Through interline partnerships, a U.S. motor carrier handles freight on the U.S. side, and a Mexican carrier handles the freight on the Mexican side, with a 'middleman' or drayage hauler in the middle. The drayage driver ferries loads back and forth across the border to warehouses or freight yards for pickup or subsequent final delivery within the designated border commercial zone."

The upshot is congestion, air pollution, and higher prices for both consumers and business. The fraught logistics of the existing system often compel trucks to return home with empty trailers or with no trailer at all. Our border infrastructure is seriously overburdened, and the entire system is quickly becoming a real brake on further growth in trade.

These problems are particularly severe for U.S. companies that operate "just-in-time" manufacturing facilities in Mexico. These operations were established with a clear expectation that transportation services would be able to deliver inputs from the United States or elsewhere to facilities in Mexico according to schedule. Our mutually beneficial trading relationship with Mexico will plainly suffer—with costly effects for U.S. business—if we fail to ensure the expeditious delivery of materials to these manufacturing facilities by modernizing the cumbersome transportation system upon which our trade with Mexico depends.

SAFETY: A VITAL ISSUE

Safety is plainly one of the most important issues at play in this dispute. Ensuring the safety of all trucks on American roads was a top priority of the U.S. trade officials who negotiated NAFTA. The Congress approved NAFTA because it was broadly satisfied with the fruits of their labors.

And why shouldn't we be? Under NAFTA, every truck entering the United States is required to meet each and every U.S. safety requirement. In fact, Mexican motor carriers applying for U.S. permits will be required to provide far more detailed information regarding their ability to meet U.S. safety requirements than their American or Canadian counterparts. Any lingering concerns over the safety of these carriers from Mexico and their trucks and drivers can surely be addressed in the proposed rules for implementing NAFTA.

While safety is an overriding concern, the United States can certainly address this issue while keeping its international obligations and expanding upon the mutually beneficial trading relationship with Mexico. Failure to try would send a troubling message about the difference in our treatment of Canada and Mexico, our two closest neighbors and largest export markets.

Finally, it is imperative that Congress make available the required funds to ensure that safety enforcement inspections of trucks on the U.S.-Mexico border are carried out with all due seriousness. The U.S. Chamber strongly supports providing necessary funding to hire additional safety inspectors to be stationed at the border and to build and maintain adequate border inspection facilities.

CONCLUSION

Because NAFTA has already eliminated most tariffs and other barriers to trade with Mexico, improving our transportation infrastructure is one of the best things we can do to keep this partnership on track. Implementing NAFTA's trucking provisions offers the opportunity to fix the cumbersome, environmentally damaging, and costly transportation system upon which our trade with Mexico depends. Growing

inspection capabilities at the U.S.-Mexico border will ensure that trucks will be able to operate on both sides of the U.S.-Mexico border with safety and efficiency.

In the final analysis, this issue revolves around whether the United States will keep its word. We should be mindful that the United States made a commitment under NAFTA to work with Mexico to modernize our cross-border transportation system. The U.S. Chamber urges the Congress to work with the administration to assist in implementing NAFTA's cross-border trucking provisions and show the world that America keeps its commitments.

ADDITIONAL COMMITTEE QUESTIONS

Senator MURRAY. But thank you, all of you, for your time and testimony today.

[The following questions were not asked at the hearing, but were submitted to the Departments and witnesses subsequent to the hearing:]

QUESTIONS SUBMITTED TO HON. MARY E. PETERS

QUESTIONS SUBMITTED BY SENATOR PATTY MURRAY

Question. Secretary Peters, one of the requirements that will be the same for both U.S. drivers and Mexican drivers is that they get a certificate of medical fitness from a physician. This issue is critical to maintaining safety on our highways. Some observers have questioned whether there are adequate safeguards, either in the United States or in Mexico, to guarantee that truck drivers are truly medically fit.

Do you have any concerns about the validity of these medical fitness certificates, when they are issued in Mexico?

Answer. No, I do not have any concerns about the validity of the medical fitness of Mexican drivers.

In order to obtain the Mexican CDL (Licencia Federal de Conductor) a driver must meet the requirements established by the Ley de Caminos, Puentes y Autotransporte Federal (LCPAF or Roads, Bridges and Federal Motor Carrier Transportation Act) Article 36, and Reglamento de Autotransporte Federal y Servicios Auxiliares (RAFSA, or Federal Motor Carrier Transportation Act) Article 89, which state a driver must pass the medical exam performed by the Secretariat of Communications and Transportation (SCT), Directorship General of Protection and Prevention Medicine in Transportation (DGPMPT).

The same medical exam is performed on all transportation operators (airline pilots, merchant mariners, and locomotive operators). It is conducted by government doctors instead of the private physicians performing the exam on U.S. drivers.

Question. What measures have you placed to ensure that these certificates are taken seriously by the medical profession in Mexico?

Answer. The SCT in cooperation with the DGPMPT will only issue a Mexican CDL to a driver who has successfully completed all requirements mandated by Mexican Law, including passing the medical exam.

Question. Subparagraph (b) of section 350 includes specific requirements to ensure that the drivers of hazmat trucks originating in Mexico are subject to the same regulations as those originating in the United States. Following the passage of section 350, the Patriot Act added new requirements for truckers carrying hazardous materials. DOT had stated definitively that during the pilot program no Mexico-domiciled carriers will be granted the authority to transport hazardous materials.

When do you anticipate the DOT and the Mexican authorities coming into compliance with this requirement?

Answer. In August 2006, the Transportation Security Administration (TSA) issued a regulation requiring Mexican and Canadian drivers entering the United States with hazardous materials to undergo a background check equivalent to the background check requirement for U.S. drivers with a hazardous materials endorsement.

In this rulemaking, TSA determined that the background check required to obtain a FAST (Free and Secure Trade) Card was equivalent to the background check for U.S. drivers.

In the coming months, DOT will work with SCT to finalize an agreement as required in the law that these regulations are substantially the same as those applicable to U.S. drivers.

Question. Will you be launching your own pilot project at that point just for hazardous materials trucks or will you just open the border to hazmats without a pilot project?

Answer. As required in the recently passed Supplemental Funding bill (Public Law 110–28), DOT will conduct a second, separate demonstration project specifically for Mexico-domiciled transporters of hazardous materials in accordance with the guidelines and procedures followed during the initial demonstration project.

The second demonstration project will build on what we learn from the current program and will include the publication of notices and specific information in the Federal Register, as required by section 350 and the standards for pilot programs in 49 U.S.C. 31315(c).

Question. The Inspector General has raised the issue about the readiness of FMCSA to evaluate and inspect buses, both in the 2005 follow-up audit and again in his testimony today. As in the case of hazmat trucks, your testimony states that bus passengers will not be able to cross the borders during the period of the pilot program.

You say specifically, that bus passengers will not be allowed to cross the border. Does this mean that the buses themselves will be able to come across?

Answer. No, "bus" means both the commercial motor vehicle and any passengers transported therein. No buses, whether transporting passengers or not, are included in the demonstration project.

Question. When the pilot program concludes, will buses and bus passengers be able to cross the border with unlimited restrictions?

Answer. As required in the recently passed Supplemental Funding bill, DOT will conduct a second, separate demonstration project specifically for Mexico-domiciled transporters of passengers in accordance with the guidelines and procedures followed during the initial demonstration project.

The second demonstration project will build on what we learn from the current program and will include the publication of notices and specific information in the Federal Register, as required by section 350 and the standards for pilot programs in 49 U.S.C. 31315(c).

Question. The Inspector General's report cites a concern that facilities at the border are not adequate to perform comprehensive inspections of buses. DOT is not allowing buses to participate in the pilot project.

Secretary Peters, is it possible that you will open the border to long-haul buses before the IG believes you have the capacity to inspect them?

Answer. We will not expand existing cross border bus authority to new Mexico-based carriers of passengers wishing to operate beyond the commercial zones and municipalities until we have satisfactorily addressed the recommendations/requirements to perform safety inspections of buses.

Question. This subcommittee needs to be focused on more than just the safety record of Mexican trucks. We need to be focused on the safety of all trucks. One issue that bothered me greatly during our debate in 2001, and bothers me still today, is the fact that more than 20 percent of trucks that are inspected in this Country are immediately put off the road for safety problems.

Secretary Peters, you pointed out that, as a result of the increased inspection resources on the border, we have now lowered the out-of-service rate for Mexican trucks down to 21 percent—roughly the same rate as we experience with U.S. trucks.

Why should the America public consider it acceptable to have more than one out of every five trucks on the road be in such unsafe conditions that a Federal inspector will immediately take them out of service?

Answer. The American public should not consider the unsafe operations of any commercial vehicle to be acceptable.

It is important to recognize that the out-of-service rate resulting from roadside inspections is the result of inspections targeted at vehicles recognized to be the highest risk. It is not a representative sample.

FMCSA and our State partners use the Inspection Selection System (ISS) to target high-risk carriers for roadside inspections. ISS uses as a chief component the SafeStat algorithm that has been proven effective at identifying unsafe motor carriers.

Question. What is your agency doing to dramatically improve the safety practices in this industry?

Answer. FMCSA's mission is to save lives and reduce injuries by preventing commercial motor vehicle crashes. Everything the agency does is in furtherance of this mission.

The largest share—$489 million or 93 percent—of our budget focuses on reducing large truck and bus crashes. In addition to our own efforts, we partner with the States by providing them grants to enforce commercial truck and bus safety laws, with special attention to motorcoach companies and carriers registered as hauling hazardous materials.

FMCSA's oversight programs are producing results. In fiscal year 2006, FMCSA and our State partners conducted 15,177 compliance reviews. These compliance reviews resulted in 4,195 enforcement actions being initiated. FMCSA found 1,035 companies deficient to the extent that we placed their operations out-of-service. We know from analysis of our compliance review programs that after a compliance review, carriers improve their safety operations. We estimate that the compliance reviews conducted in 2004 resulted in over 2,700 fewer crashes, approximately 1,900 fewer injuries, and over 100 fewer fatalities.

In addition to conducting reviews of carrier operations, FMCSA and our State partners also conducted over 3 million roadside inspections of high risk carriers' vehicles during fiscal year 2006. As a result of these inspections, we placed some 220,000 drivers out of service until serious violations could be remedied. We also removed approximately 547,000 unsafe vehicles from our highways. Again, we know from previous analysis that roadside inspections prevent crashes and save lives. We estimate that roadside inspections conducted in 2005 prevented over 18,000 crashes, about 13,000 injuries, and some 700 fatalities.

While we recognize there is still much work to be done to make our highways safer, FMCSA is proud of the safety impact resulting from these programs.

Question. Secretary Peters, under the provisions of NAFTA, both U.S. and Mexican carriers will only be allowed to haul international cargo. They will not be allowed to haul cargo between cities in Mexico if they are a U.S. carrier, or between cities in the United States if they are a Mexican carrier.

How does the agency plan to enforce this provision? What keeps a Mexican carrier that has hauled a load to Minneapolis from hauling another load from Minneapolis to Kansas City on its way back to the Mexican border?

Answer. The provisional operating authority granted to a Mexico-domiciled motor carrier to operate beyond the commercial zone and municipalities is limited to the transportation of international freight.

Commercial vehicles found to be operating beyond the scope of their provisional operating authority will be placed out of service, and the motor carrier may be subject to penalties.

FMCSA has trained all State truck inspectors regarding enforcement of operating authority and conducted significant outreach to the law enforcement community to ensure they are aware of these provisions and examine Mexican trucks during inspections to determine if they are violating these regulations.

Additionally, we have trained and will continue to train State and local law enforcement agencies on the detection of domestic point-to-point transportation (cabotage) during stops of commercial motor vehicles for traffic violations and to conduct roadside vehicle/driver inspections. This training, aimed at law enforcement agents who are not full-time truck inspectors, but may encounter a Mexican truck during a traffic stop, is being conducted in association with the International Association of Chiefs of Police.

FMCSA's training on enforcement of operating authority has been successful. In 2006 the States of California, Arizona, New Mexico, and Texas discovered 2,328 instances (from 951,229 inspections) where a carrier was found to be operating outside the scope of its operating authority. While these carriers may have been operating outside the scope of their authority for reasons other than cabotage (operating beyond the commercial zones or having not received authority), these data show a strong awareness of this issue among State and Federal enforcement personnel.

FMCSA will also use logbooks and associated supporting documents such as bills of lading during compliance reviews to determine if a Mexican carrier has been operating beyond the scope of its authority by performing cabotage.

Question. Will DOT or DHS be monitoring how long a truck has actually been in this country, to determine if they have been in the country for an unusually long period of time?

Answer. DHS will continue to screen cargo and vehicles from Mexico before admitting them to the United States. U.S. Customs and Border Protection (CBP) has vigorous screening procedures in place for commercial trucks entering the United States.

We will conduct additional security screening on these drivers. Mexican nationals are required to present an entry document, and if traveling outside the 25-mile border zone, he or she will be issued a Form I–94 in accordance with US VISIT procedures that include biometric and security requirements.

Mexican nationals are currently required to present an entry document, which may be the Laser Visa (DSP–150, or Border Crossing Card) or a nonimmigrant visa (class B–1 or B–2) inside a Mexican passport. If the person is traveling outside the 25-mile zone, he or she will be issued a class B–1 or B–2 Form I–94 for a period of time required to deliver the load, and then return to Mexico, but not to exceed

6 months. Form I–94 will be issued to the applicant in accordance with US VISIT procedures, which satisfy security, antifraud, and biometric requirements.

DOT and DHS will continue to partner in this effort to ensure safety and security requirements are completely addressed and satisfied prior to the carrier being allowed to proceed to an interior location in the United States.

Question. Earlier this year, a smuggler named Tyrone Williams was sentenced to life in prison for his role in the deaths of 19 people he was smuggling across the southern border in a truck. The truck was locked, had no air conditioning, and was packed with more than 70 people. Before they were discovered, they had been scratching at the truck's insulation and screaming for help. This incident in 2003 represents a failure of our inspection process.

Just last month, border agents found 40 people packed into another truck under stifling conditions. They were found in Texas at a checkpoint 75 miles away from the U.S. border with Mexico, and there were no injuries. That was a success of our inspection process.

Secretary Peters, what will the DOT be doing to work with DHS to make sure that people aren't killed in their attempt to cross the border?

Answer. Both the State and Federal inspectors working for DOT and DHS will be in contact with every Mexico-domiciled motor vehicle participating in the demonstration project, to ensure that both the driver and vehicle operating in the United States are in compliance with applicable U.S. safety standards.

DHS/CBP retain the primary role in detection of alien smuggling, and are actively engaged in the detection and prosecution of alien smuggling organizations. The CBP and the Undersecretary Against Organized Crimes in Mexico City continue to intercept vehicles containing aliens attempting to enter the U.S. using immigration entry documents belonging to another person. Recently, this intensive bi-national cooperation resulted in the dismantling of an extensive alien smuggling organization.

QUESTIONS SUBMITTED BY SENATOR BYRON L. DORGAN

Question. Can you describe Mexico's truck safety enforcement program? For example, does the Mexican DOT conduct roadside safety inspections? What Out-of-Service data is generated from these inspections? Does the Mexican DOT conduct periodic safety audits of Mexican carriers? Are there built-in triggers (number of violations by a carrier or company drivers) that would cause the Mexican DOT to make an on-site safety inspection of a carrier?

Answer. While we are happy to provide information regarding Mexico's truck safety enforcement program, it is critical to note that when a truck enters the United States the driver and vehicle must comply with all U.S. truck safety regulations and will be subject to inspection by Federal or State inspectors both at the roadside and during follow-up compliance reviews.

Mexico does have a roadside inspection program. According to the SCT during 2005–2006, they conducted 25,480 inspections based upon their NOM–068–SCT–2–2000, their mechanical and safety norm (regulation). Of these inspections, 1,158 inspections resulted in an out-of-service determination.

The Dirección General de Autotransportes Federal (DGAF), an agency with the SCT, does conduct safety audits of Mexican motor carriers. Among the criteria used to determine whether a motor carrier receives an audit are the number of violations cited against a motor carrier as a result of roadside inspections, creditable complaints, and accidents.

Question. Is there any attempt by Mexico DOT to enforce the logbook requirement for Mexican drivers? If so, what is the violation rate of drivers in Mexico not carrying logbooks? I understand that 15 percent of the drivers in the commercial zones that are checked are cited for not carrying the required logbook.

Answer. While we are happy to provide information regarding Mexico's hours-of-service regulations, it is critical to note that a Mexican driver who enters the United States must comply with U.S. hours-of-service regulations and will be subject to inspection by Federal or State inspectors. These inspectors are experienced at checking logbooks for violations and falsification using a variety of tools.

On March 29, 2000, Mexico's then President Zedillo published a presidential decree in the Diario Official amending the Traffic Rules on Federal Highways to require the use of driver hours-of-service logbooks by all Federal motor carrier drivers—and not just by hazardous materials drivers, as before.

The presidential decree added, among others things, article 62 B, which states: (1) that carriers must provide their drivers an hours-of-service logbook; (2) the minimum elements that must be recorded in the logbook in a printed or electronic form (carrier name and address, motor carrier service classification, vehicle make/year/

license plate tag, logbook completion date, driver name, driver license number and expiration date, origination/destination/route, hours of departure/arrival/driving/on service without driving due to unscheduled stops/out-of-service/resting, exceptions when driver may exceed hour-of-service limits, driver and carrier representative signatures); (3) that drivers must obey the hours of service established in the Federal Labor Law [1], and International Treaties, Agreements and Covenants; (4) that drivers of vehicles registered with the Secretaria de Communicaciones y Transportes (SCT) must carry an hours-of-service logbook for the last 7 days; (5) that carriers must keep their drivers' hours-of-service logbooks for the last 60 days; and that the carriers or drivers that do not comply with the hours of service logbook requirements will be fined an amount equal to as much as 400 days of the minimum wage.

According to the General Directorship of Federal Motor Carriers (DGAF), at terminals and roadside, DGAF and General Directorship of Protection and Preventive Medicine in Transportation (DGPMPT) inspectors, with the assistance of the Federal Preventive Police (PFP), enforce Mexico's driver hours-of-service logbook regulations. Drivers are required to carry the hours of service logbooks for the last 7 days. DGPMPT physicians inspect drivers for fatigue symptoms at terminals and the roadside. During a compliance review at the carrier's terminal, DGAF inspectors audit drivers' logbooks for the last 60 days.

QUESTIONS SUBMITTED BY SENATOR RICHARD C. SHELBY

Question. As this Pilot program is proceeding, what are going to be the benchmarks by which you measure your success? What are the expectations of this program? How will you determine success or failure? What are you trying to achieve?

Answer. The Department of Transportation (DOT) intends to use a variety of benchmarks to evaluate the Cross-Border Trucking Demonstration Project including: the crash rates of demonstration project participants; convictions of drivers for violation of U.S. traffic safety laws; driver and vehicle out-of-service rates; violations discovered during pre-authorization safety audits; and compliance with U.S. drug and alcohol requirements.

Additionally, DOT has appointed an independent panel to evaluate the safety impact of Mexico-domiciled motor carriers operating beyond the border commercial zones. The synthesis of the data analyzed will guide the Secretary of Transportation on future decisions concerning the operation of Mexico-domiciled motor carriers beyond the border commercial zones.

The evaluation will provide an assessment of whether the safety performance of Mexico-domiciled carriers operating beyond the border commercial zone in the United States differs from the performance exhibited by U.S.-domiciled carriers.

DOT is attempting to demonstrate the effectiveness of the safety programs implemented by DOT, with guidance from section 350 of the 2002 Appropriations Act, so that DOT can fulfill its NAFTA obligations while maintaining the safety on our highways.

Question. What efforts have been made to make truckers in the United States aware of this program? How much interest has there been from American trucking companies wanting to take advantage of this program? How many Mexican companies have expressed an interest?

Answer. The Department began this program by making a very public set of announcements along the U.S./Mexico border in El Paso, Nogales, and Otay Mesa and by issuing a press release. In the months that have followed, Departmental and FMCSA officials have spoken about the demonstration program before industry groups and made themselves available to print, radio, and television journalists.

On May 1, 2007, FMCSA published a Federal Register Notice requesting comments on the Cross-Border Trucking Demonstration Project. Additionally, DOT and

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[1] Mexican Labor Law establishes, inter alia: (1) daily hours-of-service limits of 8 hours for the day shift (6 a.m.–8 p.m.), 7 hours for the night shift (8 p.m.–6 a.m.) and 7.5 for the mixed shift; (2) that during a continuous work day, workers must rest for at least one half hour; (3) that if the worker cannot leave the workplace for rest or meal breaks, the corresponding time must be counted as part of the hours of service; (4) a daily overtime allowance of up to 3 hours but only 3 times a week (maximum 9 hours per week total), which must be paid at double the hourly rate; (5) that workers are not required to work more than the established overtime limit, and that any additional overtime in excess of 9 hours per week must be compensated at triple the hourly rate and the employer may be subject to sanctions; and (6) after six workdays, workers are allowed one day of paid rest (in addition to mandated holidays and vacation), which should be Sunday; if work must be performed on Sunday, the worker should receive the Sunday hourly rate, plus an additional 25 percent.

FMCSA have published information concerning the demonstration project on their websites.

Since February 2007, approximately 30 U.S. motor carriers have contacted FMCSA requesting information about participating in the demonstration project.

Since May 2002, 745 Mexico-domiciled motor carriers have submitted applications for authority to operate beyond the border commercial zones.

Question. How is the monitoring of the Mexican trucking companies actually going to take place? Is the Department staffed and prepared to handle the increased numbers of inspections? How can you guarantee that our own trucks will be safe on America's highways with the added responsibility of providing inspections for the Mexican trucks?

Answer. Any Mexico-domiciled motor carrier that participates in the demonstration project is required to submit to and successfully complete a pre-authorization safety audit (PASA). The PASA is designed to ensure that the motor carrier has adequate motor carrier management safety systems and controls.

Further, any Mexico-domiciled motor carrier that is granted provisional authority to operate beyond the border commercial zones is subject to an 18-month heightened roadside inspection program. The heightened roadside inspection program is designed to closely monitor the on-the-road safety performance of the motor carriers and to expedite enforcement actions taken against motor carrier that are found to be in violation of safety regulations.

In addition, these motor carriers will be required to display a valid Commercial Vehicle Safety Alliance (CVSA) safety decal for at least 4½ years after receiving provisional authority to operate beyond the border commercial zones. CVSA safety decals are valid for a maximum of 3 months, and a motor carrier's vehicle must successfully complete a 39-point safety inspection in order to obtain a decal.

DOT is staffed and prepared to conduct the safety inspections associated with the demonstration project. Approximately 550 Federal and State personnel are situated along the U.S./Mexico border and inspect Mexico-domiciled motor carriers. Due to the 100 motor carrier limit to the demonstration project, DOT does not anticipate a significant increase in the number of drivers and vehicles requiring inspection.

The resources to oversee the safety of Mexican motor carriers have been provided by the Congress through the 2002 Appropriations Act and other appropriations law, in addition to the other resources provided the Agency to monitor the safety of U.S. and Canadian trucking companies. In fact, FMCSA is prohibited by section 350 of the 2002 Appropriations Act from diverting to our Mexican safety programs funds appropriated for overseeing the safety of U.S. trucks. It is worth noting that, using the resources allocated, FMCSA has for the past 2 years achieved the lowest Large-Truck Fatality Rate in 30 years.

Question. How are you going to monitor the comings and goings of the trucks from Mexico? How are you going to make sure they go where they say they are going, and do what they say they are going to do? Do you have a system in place to track the whereabouts of Mexican trucks or will they have free rein over our highway system after they cross the border?

Answer. FMCSA employees and our State partners will monitor all trucks as they cross the border and perform checks of driver licenses and CVSA decals.

FMCSA will use entry and exit records from Customs and Border Protection to monitor Mexican truck activity in the United States.

FMCSA will also use records such as logbooks and associated supporting documents such as bills of lading during compliance reviews to determine if a Mexican carrier has been operating beyond the scope of its authority by performing point-to-point hauling within the U.S. (cabotage).

DOT will not restrict demonstration project participants to predetermined regions, routes or schedules. However, as previously mentioned, FMCSA will monitor the movement of the trucks engaged in the demonstration project.

Question. Is this program going to encourage U.S. trucking firms to relocate to Mexico to take advantage of a cheaper labor force and more lax regulation? What is the impact of this program on the U.S. trucking industry and its labor force?

Answer. The Cross-Border Trucking Demonstration Project is designed to implement the trucking provisions of the NAFTA. It will authorize Mexico-domiciled motor carriers to transport international freight to and from the United States. It does not authorize domestic point-to-point transportation (cabotage). DOT does not anticipate U.S. trucking firms relocating to Mexico because as such they would be prohibited from providing domestic point-to-point transportation in the United States.

The Department anticipates that the Cross-Border Trucking Demonstration Project will have a negligible effect on the U.S. trucking industry and labor force. The international shipments authorized to be transported by Mexican trucking com-

panies comprise only a small percentage of the daily freight transportation in the U.S. In addition, the demonstration program will be limited to 100 carriers. There are over 700,000 interstate motor carriers in FMCSA's database.

QUESTIONS SUBMITTED BY SENATOR PETE V. DOMENICI

Question. Madam Secretary, New Mexico's economy is significantly impacted by cross border trade. Commercial truck traffic is vital to this trade and I believe allowing Mexican trucking companies that comply with all U.S. requirements to operate outside of the 25-mile border zone may bring great benefits to both the New Mexican and Mexican economies.

However, we must ensure that any action taken by your Department, in cooperation with the Mexican Government, the Department of Homeland Security, and other interested parties, makes the safety of your new program a priority. Ensuring the safety of American highways must continue to be of the utmost importance.

How will your Department ensure that Mexican trucks traveling into the United States are safe?

Answer. Any Mexico-domiciled motor carrier that participates in the demonstration project is required to submit to and successfully complete a pre-authorization safety audit (PASA). The PASA is designed to ensure that the motor carrier has adequate motor carrier management safety systems and controls.

Further, any Mexico-domiciled motor carrier that is granted provisional authority to operate beyond the border commercial zones is subject to an 18-month heightened roadside inspection program. The heightened roadside inspection program is designed to closely monitor the on-the-road safety performance of the motor carriers and to expedite enforcement action against motor carriers that are found to violate safety regulations.

In addition, these motor carriers will be required to display a valid Commercial Vehicle Safety Alliance (CVSA) safety decal for at least 4½ years after receiving provisional authority to operate beyond the border commercial zones. CVSA safety decals are valid for a maximum of 3 months, and a motor carrier's vehicle must successfully complete a 39 point safety inspection in order to obtain a decal.

DOT is staffed and prepared to conduct the safety inspections associated with the demonstration project. Approximately 600 Federal and State personnel are situated along the U.S.-Mexico border and inspect Mexico-domiciled motor carriers.

Question. How often will Mexican companies be required to submit to safety audits to retain their certification to operate on U.S. roads?

Answer. Mexican motor carriers participating in the demonstration project are required to submit to a PASA once.

However, the participants are subject to an 18-month heightened roadside inspection program designed to closely monitor the on-the-road safety performance of the motor carriers and to expedite enforcement action against motor carriers that are found to violate safety regulations.

Additionally, the participants are subject to a compliance review within 18 months of receiving provisional authority to operate beyond the border commercial zones. If a participant motor carrier fails to achieve a satisfactory safety rating as a result of the compliance review, the participant's authority is subject to suspension and/or revocation.

Question. How many inspection teams from the Motor Carrier Safety Administration are being devoted to this program?

Answer. DOT is staffed and prepared to conduct the safety inspections associated with the demonstration project. Approximately 600 Federal and State personnel are situated along the U.S.-Mexico border and inspect Mexico-domiciled motor carriers.

FMCSA has dedicated 32 teams of auditors and investigators to conduct PASAs and compliance reviews. Each team consists of one auditor and one investigator. These teams are part of the 600 personnel mentioned above.

Question. When does the Department of Transportation expect the program to conduct on-site safety audits of Mexican trucking companies to be fully implemented?

Answer. To date, FMCSA has completed 32 PASAs where the motor carrier has successfully completed the audit.

FMCSA has conducted an additional six PASAs where the motor carrier did not successfully complete the audit.

FMCSA anticipates completing 100 successful PASAs by mid-Summer 2007.

QUESTIONS SUBMITTED TO HON. CALVIN L. SCOVEL III

QUESTIONS SUBMITTED BY SENATOR PATTY MURRAY

Question. Mr. Scovel, in your report you cited a concern that there is not adequate facilities at the border to perform comprehensive inspections of buses as such DOT is not allowing buses to participate in the pilot project.

Do you see aggressive efforts on the part of DOT to create the capacity to adequately inspect buses at the border?

Answer. The Federal Motor Carrier Safety Administration has taken action to address our prior findings regarding the capacity to conduct bus inspections at the southern border. However, before we can characterize the Department's efforts as aggressive or otherwise, we need to obtain FMCSA's response on our latest findings in this area.

Our January 3, 2005,[1] report disclosed that, while buses are currently inspected at commercial truck crossings, sufficient staff was not available at some designated bus crossings to meet section 350 requirements for verifying the driver's commercial license and inspecting vehicles that have expired Commercial Vehicle Safety Alliance (CVSA) decals. In response to our report, FMCSA worked with the U.S. Customs and Border Protection Service to identify mutually acceptable procedures and implemented a Southern Border Bus Inspection Plan. The Inspection Plan identified the ports of entry in each southern border State along with a description of their respective bus inspection issues and the planned strategies for addressing those issues.

In our current report, which we expect to issue soon, we observed bus inspections at a major border crossing. 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 lack of a ramp on which to conduct inspections, were brought to our attention during contacts with inspectors at other, randomly selected border crossings. We are recommending that FMCSA ensure that adequate space is available to conduct bus inspections as required by section 350 criteria, by working on a site-specific basis with the U.S. Customs and Border Protection Service to modify the Southern Border Bus Inspection Plan. We will request that FMCSA provide specific actions planned in response to this report.

Question. The Inspector General has raised the issue about readiness of FMCSA to evaluate buses, both in the 2005 follow-up audit and again in his testimony today. As in the case of hazmat trucks, Secretary Peters' testimony states that bus passengers will not be able to cross the borders during the period of the pilot program?

Mr. Scovel, can you comment on this issue and measures that you think need to be addressed when it comes to cross-border bus traffic?

Answer. Our January 3, 2005 report[1] disclosed that, while buses are currently inspected at commercial truck crossings, sufficient staff was not available at some designated bus crossings to meet section 350 requirements for verifying the driver's commercial license and inspecting vehicles that have expired Commercial Vehicle Safety Alliance (CVSA) decals. In response to our report, FMCSA worked with the U.S. Customs and Border Protection Service to identify mutually acceptable procedures and implemented a Southern Border Bus Inspection Plan. The Inspection Plan identified the ports of entry in each southern border State along with a description of their respective bus inspection issues and the planned strategies for addressing those issues.

In our current report, which we expect to issue soon, we will note that in fiscal year 2005, Federal and State inspectors performed 27,262 bus inspections in the 4 southern border States. In September 2006, we observed bus inspections at a major border crossing. While the inspections met the established standards, 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 lack of a ramp on which to conduct inspections, were brought to our attention during contacts with inspectors at other, randomly selected border crossings.

[1] 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 at our web site: www.oig.dot.gov.

Based on this work, one measure FMCSA needs to take is to update the Southern Border Commercial Bus Inspection Plan to address the issues we have raised. These issues need to be addressed to ensure that Mexican bus carriers granted long-haul authority are not able to to avoid vehicle or license inspections, as required by section 350, during busy periods at this crossing.

In addition, any future inclusion of buses in the demonstration project would need to recognize the differences in bus operations at the border, specifically the fact that buses are permitted to enter the United States at separate bus crossings and at a time when commercial trucks are restricted.

Approximately, 250,000 buses crossed the southern border in 2005 so the amount of traffic is significant. Given this situation, applying the "check every truck every time" criteria being used in the present demonstration project would be challenging. In our January 3, 2005, audit we recognized that issues such as the handling of passengers during inspections meant that alternative methods might be appropriate for handling inspections, and such alternatives would need to be specified before including buses in the demonstration project. Section 350 itself makes no specific mention of bus inspection procedures. Thus, any future demonstration project that included buses would need to address the methods to be used for bus inspections.

CONCLUSION OF HEARING

Senator MURRAY. And this subcommittee will now stand in recess until Thursday, March 15 when we will take testimony on the Federal Housing Administration within HUD.

[Whereupon, at 11:40 a.m., Thursday, March 8, the hearing was concluded, and the subcommittee was recessed, to reconvene subject to the call of the Chair.]

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