

March 13, 2007

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Highways and Transit

FROM: Subcommittee on Highways and Transit Staff

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

PURPOSE OF THE HEARING

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

BACKGROUND

DOT Demonstration Project

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

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

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

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

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

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

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

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

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

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

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

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

Implementation of NAFTA Trucking Provisions

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

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

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

Congressional Action on NAFTA Trucking Provisions

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

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

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

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

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

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

Safety Concerns: DOT Inspector General Audits

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

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

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

The OIG continued its oversight and conducted follow-up audits as required by the Appropriations Act, which were issued on May 16, 2003, and January 3, 2005. As of the 2005 audit, numerous actions, including regulations to be issued by FMCSA and the Transportation Security Administration, had not been completed. The OIG identified the following uncompleted actions required by Section 350 that, until addressed, would have prevented DOT from processing applications for long-haul operating authority by Mexican carriers⁴.

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

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

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

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

³ OIG Report Number MH-2002-094, *Implementation of Commercial Vehicle Safety Requirements at the U.S.-Mexican Border* (June 25, 2002).

⁴ OIG Report Number MH-2005-032, *Follow up Audit of the Implementation of the North American Free Trade Agreement’s (NAFTA) Cross Border Trucking Provisions* (January 3, 2005).

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

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

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

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

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

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

WITNESS LIST

PANEL I

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