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U.S. Department of Transportation
Dockets Management Facility
Room PL-401
400 Seventh Street, S.W.
Washington, D.C. 20590

- Re:**
- 1. Docket FMCSA-98-3297; 66 Fed. Reg. 22327 (May 3, 2001)
Revision of Regulations and Application Form for Mexican-Domiciled Motor Carriers to Operate in U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border**
 - 2. Docket FMCSA-98-3298; 66 Fed. Reg. 22371 (May 3, 2001)
Application by Certain Mexican Motor Carriers to Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border**
 - 3. Docket FMCSA-98-3299; 66 Fed. Reg. 22415 (May 3, 2001)
Safety Monitoring System and Compliance Initiative for Mexican Motor Carriers Operating in the United States**

Public Citizen appreciates the opportunity to comment on the Federal Motor Carrier Safety Administration's (FMCSA) proposed new and revised applications and safety monitoring procedures for opening the border to Mexican-domiciled trucks under the North American Free Trade Agreement (NAFTA). We believe that the proposed rules fail to acknowledge the inadequacy of the existing enforcement structure and will not protect the public from unsafe trucks crossing into the United States.

If the border opens by the January 1, 2002 deadline announced by President Bush, under these proposed rules, unsafe trucks will inevitably escape detection and travel freely throughout the United States, endangering motorists and risking a trade-related debacle. For these reasons, the issue has already triggered widespread and deep opposition. A group of ten senators who support NAFTA sent a letter to President Bush expressing reservations about the inadequate inspection force at the border

and the proposed 18-month period in which carriers may operate without a safety review.¹ A majority of House members have also indicated their concern about the safety of Mexican cross-border traffic in a recent vote denying funding for the processing of applications on behalf of Mexican carriers.²

Business interests argue that allowing long-haul trips from the interior of Mexico into the United States would be more efficient than the present system, but some Mexican truckers find that the present system of long-haul to short-haul transitions at the border is relatively quick and that the physical transfer of truck loads takes less time than it takes for customs officials to process cross-border paperwork.³ Congestion at the border will increase, not decrease, as more businesses take advantage of Mexico's network of cheaper trucking and warehouse labor to ship cargo to the interior United States.

Little has changed since the Clinton Administration, prompted by safety concerns, refused to open the border in 1995. Mexico has not yet put in place a regulatory system comparable to those in the U.S. and Canada, as it is required to do under NAFTA. The out-of-service rate for Mexican-domiciled trucks crossing the border is still significantly higher than the out-of-service rate for trucks in the U.S. and Canada. The border is still woefully short on federal inspectors and resources to ensure that unsafe trucks are not admitted.

The United States must limit access to Mexican-domiciled trucks until it can implement an effective system to ensure that these trucks comply with U.S. regulations. The proposed rules are inadequate to meet that objective in a number of respects. The agency evidently plans to grant operating authority based only on a paper application, without verifying the information submitted by applicants. To evaluate the safety fitness of Mexican carriers, the agency intends to rely heavily on an unpopulated database that currently lacks the basic information necessary to process applications or to

¹ Letter to the President from Senators Kerry, Baucus, Bingaman, Harkin, Daschle, Wyden, Kennedy, Bayh, Lieberman, and Durbin, June 11, 2001.

² A recent *Wall Street Journal* article reported: "...82 Republicans joined 201 Democrats and two independents in voting to halt the safety permits. House leaders said one reason for the big margin was that lawmakers wanted to send a message to Mr. Bush to toughen regulations governing Mexican trucks." Helene Cooper, "Bush Wants to Reverse House Attempt to Keep Mexican Trucks Off U.S. Roads," *Wall Street Journal*, 6/28/2001.

³ The Associated Press interviewed Mexican truck drivers who oppose the opening of the border to long-haul trucks: "Gomez said that unhitching a trailer from a Mexican truck and hooking it to a U.S. one at the border usually occurs as the drivers wait for officials to process their border-crossing papers.

"We're always much faster' than the officials, he said." *Associated Press*, "Mexico Might Strike Against the United States," 6/27/2001.

perform a safety review. The agency permits itself an 18-month window before completing a safety review of a Mexican carrier after it has been granted a certificate of registration, but eighteen months is far too long to wait to verify a company's regulatory compliance and safety record.

The integrity of the application and review process is critical because information long available on the safety record of the Mexican trucking fleet shows that great improvement would be needed to meet U.S. safety standards. Border inspection facilities lack the resources and new inspectors necessary to pick up the slack created by weak enforcement of regulations on both sides of the border and inspect all Mexican trucks.⁴ As our comments show, once a truck gets beyond the border, it is not likely to face inspection or verification of operating authority by either state or federal officials.

The NAFTA arbitral panel ruling directing the U.S. to open the border expressly provided permission in its ruling for U.S. authorities to establish inspection and licensing requirements that are not "like" those already in place for U.S. carriers, so long as their expectations are the result of legitimate safety concerns.⁵ Thus, the U.S. could establish a program which requires Mexican trucks to meet

⁴ The number of inspectors is not likely to increase this year. On June 27, 2001, the *Washington Post* reported that the money earmarked for the hiring of an additional 80 inspectors was "struck from the spending bill on technical grounds yesterday." Juliet Eilperin, "House Acts to Block Mexican Trucks," *Washington Post*, 6/27/2001.

⁵ Recommendations of the arbitral panel state:
"300. The panel notes that compliance by the United States with its NAFTA obligations would not necessarily require providing favorable consideration to all or to any specific number of applications from Mexican-owned trucking firms, when it is evident that a particular applicant or applicants may be unable to comply with U.S. trucking regulations when operating in the United States. Nor does it require that all Mexican-domiciled firms currently providing trucking services in the United States be allowed to continue to do so, if and when they fail to comply with U.S. safety regulations. The United States may not be required to treat applications from Mexican trucking firms in exactly the same manner as applications from U.S. or Canadian firms, as long as they are reviewed on a case by case basis. U.S. authorities are responsible for the safe operation of trucks within U.S. territory, whether ownership is U.S., Canadian or Mexican.

"301. Similarly, it may not be unreasonable for a NAFTA Party to conclude that to ensure compliance with its own local standards by service providers from another NAFTA country, it may be necessary to implement different procedures with respect to such service providers. Thus, to the extent that the inspection and licensing requirements for Mexican trucks and drivers wishing to operate in the United States may not be "like" those in place in the United States, different methods of ensuring compliance with the U.S. regulatory regime may be justifiable. However, if in order to satisfy its own legitimate safety concerns the United States decides, exceptionally, to impose requirements on Mexican carriers that differ from those imposed on U.S. or Canadian carriers, then any such decision must (a) be made

more stringent standards than is the case under current U.S. law. Such an accommodation is highly unusual in a trade ruling, and is an open invitation for the U.S. to act responsibly to fulfill its safety obligations to the American public.

Despite such considerations by the panel, FMCSA has proposed rules which achieve the opposite of what is permitted under the ruling. The agency's proposals actually allow greater latitude in several key areas for Mexican-domiciled carriers and drivers than currently apply to U.S. and Canadian companies and drivers under U.S. law. In fact, the agency's proposed 18-month safety review process imposes far fewer and generally less serious consequences for safety violations than applies in its absence, thus creating a safe harbor for Mexican-domiciled entrants to the market and a competitive disadvantage for U.S. interests.

NAFTA failed to link the development of a commercial carrier safety infrastructure in Mexico with the time-line for opening the U.S.-Mexico border to commercial trucks. The FMCSA is clearly struggling, in these rules, between the "rock" of the NAFTA-globalization juggernaut and "hard place" of its assigned mission to assure the safety of commercial carriers in the U.S. The proposed rules, however, answer to trade at the expense of safety. Because the agency puts trade first, and because agency decision makers are all too aware of the practical impediments to reasonable enforcement, the proposed rules demonstrate far less concern with technical feasibility than is usual in the agency's history.

The rules appear — although surely the FMCSA is not — to be almost entirely uninformed about the real risks that these dangerous proposals pose to the U.S. public, and to the image of "free" trade here at home. We are acting far too quickly, with far too little attention to the actual and potential costs, and at the risk of causing hazardous material spills, horrific truck crashes and other unnecessary suffering and death on U.S. highways. We urge the agency to reconsider its rules in light of the real risks to American motorists and its safety mission, and to formulate its future proposals with full awareness of the practical consequences and importance of its actions.

I. The push to open the border to Mexican trucks without assurance of their safety is the result of a fatal flaw in the North American Free Trade Agreement.

The NAFTA agreement required the United States to open its border to Mexican trucks in phases beginning in 1995. The time-line laid down in the agreement was not linked in any way to Mexico's promise, also in the agreement, to improve its domestic level of safety for commercial carriers

in good faith with respect to a legitimate safety concern and (b) implement differing requirements that fully conform with all relevant NAFTA provisions.”

North American Free Trade Agreement Arbitral Panel Established Pursuant to Chapter Twenty: In the Matter of Cross-Border Trucking Services, Secretariat File No. USA-MEX-98-2008-01, Final Report of the Panel, Feb 6, 2001, 81-82.

and to build up its oversight and safety inspection resources to levels commensurate with the U.S. and Canada.

Without acting whatsoever on its domestic obligations, almost three years ago the Mexican government brought a dispute before a NAFTA arbitral panel to open the southern U.S. border to cross-border commercial traffic. Last summer, the Mexican government, following work with trucking industry representatives, finally issued a fledgling set of basic rules for commercial carrier safety. The rules are voluntary for the first year and are phased in over two years. Public Citizen's analysis of the rules (*see* "Recent Mexican Trucking Rules Do Not Solve Serious Safety Hazards," attached) shows the rules are deficient in many areas, and do not compare favorably to protections provided by U.S. standards and rules.

Regardless of the lack of progress on safety standards in Mexico, the NAFTA panel ruled that the U.S. should open the border or face trade sanctions, thus demonstrating the untenability of the agreement's structure. Once the U.S. actually opens the border, it of course will have no leverage with Mexico to encourage it to continue or improve this regulation process.

Moreover, the massive funding for the necessary inspection and border resources amounts to an in-kind subsidy of federal dollars to cross-border companies that will grease the wheels of trade and further erode border communities and infrastructure. In this case, public tax dollars must be spent to facilitate a trade agreement, which will in turn enable the flow of commercial traffic across the border and enhance of the profitability of private trucking companies. Because the agreement itself allows no operating room to control expenditures at the border, and because the border's opening was not linked to a safety time-line, NAFTA is a gun to the head of both FMCSA and the U.S. budget for federal border inspections.

II. Mexico's fledgling commercial carrier regulatory system has little substance.

A. Mexico's new regulations are weak and not yet actively enforced.

The Mexican government finally began to honor its obligations under NAFTA last summer with the passage of new, albeit weak, regulations for commercial carriers. The inspection standards adopted under the new laws have been voluntary since their enactment a year ago, and have not been in place long enough to generate data. Planned to be "phased in" over the next two years, they become compulsory this summer, but there is as yet little evidence of enforcement or new funding for roadside inspections or database development. According to the translated text of the Mexican statute, the standards were drafted by a panel that included a number of industry representatives.⁶

⁶ Translation of "Official Mexican standard NOM-068-SCT-2-2000, Ground Transportation - Federal motor transport service for passengers, tourism, hauling and private transportation - Mechanical and safety conditions for operating trucks on national roads and bridges," *Diario Oficial*,

The new Mexican inspection standards are far less stringent than U.S. standards, and have been written so as to work against a thorough inspection. While the inspections called for in the law include more than 143 actions to test components of the truck, inspectors must complete each inspection within an impossibly short time: 20 minutes maximum for a hazardous materials vehicle and 30 minutes maximum for a general cargo vehicle.⁷ Although the Mexican inspection standards are purported to be “based” on Commercial Vehicle Safety Alliance (CVSA) out-of-service criteria, CVSA does not set limits on the time necessary to make an inspection. The standard CVSA Level I inspection takes an estimated 45 to 60 minutes to complete, and the discovery of a serious violation may trigger a longer, more thorough inspection that can take hours. The Mexican standard also provides for inspection facilities to be run by non-governmental third parties, which are likely to generate fees that will trigger conflicts of interest.⁸ There is no reason to believe that the inspection process will be untouched by the corruption which, according to news reports, is a constant challenge for the government and people of Mexico.⁹

The new Mexican inspection regulations allow unsafe vehicles to slip through the cracks. New vehicles are completely exempted from inspections for two years after the date of manufacture.¹⁰ Vehicles with multiple borderline infractions are not sanctioned because the inspection criteria are not cumulative. While the law allows for fines, it does not specify their amount, indicating that they may be so small that carriers can treat such fines as a cost of doing business. A number of safety defects that merely incur a fine and a request that the problem be fixed within 20 days in Mexico would be sufficient cause to remove a truck from the road in the U.S. These defects include improperly stored hazardous materials, missing fuses, worn or exposed wires, a lack of windshield wipers, a shattered windshield, damaged tires, broken wheel rims, leaky fuel lines, worn or cracked load securement chains, loose steering wheels, cracked brake drums and inoperative brake linings.¹¹

July 4, 2000. The preface lists over twenty companies and industry alliances.

⁷ “Official Mexican Standard MON-068-SCT-2-2000,” section 5.2.1.2.

⁸ “Official Mexican standard NOM-068-SCT-2-2000,” section 5.2.2.1.

⁹ See Robert Collier, “Mexico’s Trucks on Horizon: Long-distance haulers are headed into U.S. once Bush opens borders,” *San Francisco Chronicle* 3/4/2001 (*describing a ride-along with a Mexican long-haul trucker; police asked the trucker for bribes twice on the three-day trip*). See also “In Mexico, Graft Infects Every Aspect of Society,” *Chicago Tribune*, 4/15/2001 (*describing traffic stops in which motorists pay bribes to transit policemen to avoid the long process of being issued a formal ticket, and discussing what the Mexican government is doing to try to stop the graft*).

¹⁰ “Official Mexican Standard MON-068-SCT-2-2000,” section 5.2.2.2.

¹¹ See attachment A: “Recent Mexican Trucking Rules Do Not Solve Serious Safety Hazards.”

B. *The new Mexican regulatory system is not supported by a regulatory infrastructure.*

There is little evidence of funding or administrative structure for enforcing these laws. The wildly optimistic report released last fall by the Land Transportation Standards Subcommittee (LTSS), a group established under NAFTA to serve as a liaison among the governments of Canada, Mexico, and the United States in establishing a shared safety program, fails to emphasize the following serious problems documented in the report:

- ! Training for the road inspection program in Mexico fell apart.¹²
- ! Mexico has higher weight restrictions than the U.S., and no operational weigh stations.¹³
- ! Although Mexico has had a drug and alcohol testing requirement stemming from a 1998 Memorandum of Understanding with the U.S., Mexico has no laboratories that are U.S.-certified for drug testing.¹⁴
- ! The Mexican safety regulations are to be enforced only by Mexican federal officers, and only on Mexican federal highways, which represent 10 percent of all the highways in Mexico.
- ! There is no evidence to indicate the level of access that Mexican authorities on the highway have to the safety database they are developing or how regularly they are adding to it. Currently, the lack of information in the database renders it functionally inoperational.
- ! Mexico has required hours of service logbooks for hazardous materials drivers since 1993 and for all other commercial vehicle drivers since March 29, 2000,¹⁵ but U.S. border officials have

¹² “Marquez said federal police appear to have abandoned a program of random highway inspections that was inaugurated with much fanfare last fall.” Robert Collier, “Mexico’s Trucks on Horizon: Long-distance haulers are headed into U.S. once Bush opens borders,” *San Francisco Chronicle*, 3/4/2001. *See also* statements made at Land Transportation Standards Subcommittee briefing, 11/28/2001.

¹³ Robert Collier, “Mexico’s Trucks on Horizon: Long-distance haulers are headed into U.S. once Bush opens borders,” *San Francisco Chronicle*, 3/4/2001.

¹⁴ Department of Transportation Office of the Inspector General report MH-2001-059, “Interim Report on Status of Implementing the North American Free Trade Agreement’s Cross-Border Trucking Provisions,” May 8, 2001, at 17.

¹⁵ *Ibid.*

yet to see a Mexican logbook.¹⁶

C. Mexico still has no hours of service rules.

Unlike safety regulation in the U.S. and Canada, Mexican laws do not include hours of service rules. Mexican carriers often require their workers to drive for much longer periods per day than the U.S. statutory hours of service limit.¹⁷ In fact, the new Mexican regulations leave carriers to design logbooks for hours of service “according to its needs.”¹⁸

D. Assuring the safety fitness of trucks must be a priority in Mexico before they reach the border.

A functioning road inspection system in Mexico will be crucial for assuring the fitness of Mexican trucks *before* they reach the border. The Mexican trucking fleet is older and receives more out-of-service orders than the U.S. fleet when trucks are inspected at the border.¹⁹ A recent report indicates that it would take some years and billions of dollars to bring the Mexican trucking fleet up to the quality of the U.S. fleet.²⁰

III. Admission processes at the border will not filter out unsafe trucks.

A. The proposed application process for Mexican-domiciled trucks will not ensure

¹⁶ Statements of Tom Kosloski, 11/28/2000.

¹⁷ Robert Collier, “Mexico’s Trucks on Horizon: Long-distance haulers are headed into U.S. once Bush opens borders,” *San Francisco Chronicle*, 3/4/2001.

¹⁸ “The logbook of driver’s hours of service is designed by the company, according to its needs.” Translation of “Official Mexican Standard MON-068-SCT-2-2000,” Appendix “A”, Annex 1.

¹⁹ “FMCSA reports that in FY 2000, 36 percent of the Mexican trucks that were inspected were placed out of service. This contrasts with a 24 percent out-of-service rate for U.S. trucks nationwide in FY 2000.” Department of Transportation Office of the Inspector General report MH-2001-059, “Interim Report on Status of Implementing the North American Free Trade Agreement’s Cross-Border Trucking Provisions,” May 8, 2001, at 7.

²⁰ “Many of Mexico’s 375,000 freight trucks have been in service for 15 to 20 years, compared with an average of five years in the United States. Industry leaders say it would cost billions of dollars over the next decade to bring the Mexican fleet to U.S. standards, though many defend the safety of their vehicles.” “Mexico Might Strike Against the United States,” *Associated Press*, 6/27/2001.

compliance.

The proposed rules do not provide for verification of the information submitted in the paper application.

The application procedures for Mexican-domiciled carriers that are included in the proposed rules do not provide for verification of the claims and submitted information. They rely heavily on self-reporting and do not outline or mention any process by which the truth of this information will be ascertained. In fact, some of the application information requested by FMCSA may prove to be unverifiable.

Under the proposals, registration is granted primarily on the basis of information supplied by the applicant on the application and on the applicant's reassurance that it has knowledge of, and will comply with, relevant U.S. safety regulations.²¹ *All the applicant must do to demonstrate knowledge of applicable regulations is check "yes."* Interestingly, there is no box to check "no."

The carrier also need only describe its "plan" for complying with drug testing and other programs, rather than submit proof that drug tests have been taken and results have been acceptable. Any inaccurate information supplied in an application likely will not be caught before a certificate of registration is issued.

The Department of Transportation Office of the Inspector General investigated and reported on the failure of FMCSA and its predecessor to verify information supplied by Mexican-domiciled carriers.

The Department of Transportation has never implemented a verification process for Mexican registration information, and as a result, much of the information that the DOT currently has in its databases regarding Mexican-domiciled carriers is outdated or unverified. A November 1999 Office of the Inspector General audit report found that "there was too much reliance on the information contained in the application [of Mexican-domiciled motor carriers] without verification."²² The Inspector General

²¹ Registration for operating within the border zone is granted upon consideration of both the application information and the carrier's inclusion in Mexican databases. Registration for operating beyond the border zone is conditional upon the satisfactory completion of a safety review to be conducted within 18 months after the grant of registration, including an evaluation of the carrier's safety record as reflected in information from the MCMIS database.

²² Office of the Inspector General Audit Report TR-2000-013: "Mexico-Domiciled Motor Carriers." Nov 4, 1999, at 9.

found that there were no processes in place to confirm the claims.²³

Furthermore, the report pointed out that the application process did not require that documents to be submitted with the application be certified copies.²⁴ The proposed rules present the same serious problems, but the negative effects of granting operating authority on the basis of inaccurate information will extend beyond the commercial zone to the entire United States, where such operating authority is granted.

The information requested may be distorted through error or fraud.

Much of the information provided by applicants may not be verifiable under current practices. The applicant is asked to report whether it is “affiliated” with a carrier that has been disqualified from operating in the United States, but it does not define “affiliated” and it is unclear whether FMCSA has the ability to track any of this information.

Indeed, the instructions of the proposed applications imply that applicants’ business information *cannot* be compared or cross-checked. The application forms instruct applicants to enter the name of the carrier exactly the same way each time a name is required, or the department will list two slightly different names as two different companies. The instruction suggests that the DOT has no way to cross-check the owners, addresses, and other information of a company to ensure that a company is not counted twice. *A simple typographical error in the name of a carrier for an entry of inspection or crash data into the database, then, could fail to match negative safety data with that carrier.* In addition, carrier with a poor safety record could re-register under a new name to get a second “chance” in the DOT database.

Information on drivers’ safety records may not be available.

While important safety information involves individual drivers’ safety records, it is not clear that this information has been compiled in Mexico and would be included in the database. This omission presents another example of the problem in monitoring the Mexican trucking industry as opposed to the U.S. trucking industry. Information vital to determining the safety of drivers and carriers will inevitably be more accurate and more complete regarding U.S. drivers. As a result, danger signs that would be detected regarding U.S. carriers will not be detected in Mexican carriers, compromising the level of safety we have sought to achieve through regulation, and burdening only U.S. carriers while leaving Mexican carriers unaffected.

²³ Ibid. When the IG attempted to verify certain information about Mexican carriers in DOT records, it found that it could not confirm ownership or even the mailing addresses of some carriers.

²⁴ Ibid.

B. The database to be used in the safety review contains little data and will be completely inadequate in evaluating the safety of Mexican carriers.

Authorities have added little or no data to the database.

A significant problem with the proposed rules is their dependence on a joint database to be maintained between the U.S. and Mexico. Under the agency's proposal, registration is conditional upon a satisfactory safety review, including an evaluation of the "safety fitness" of the carrier as reflected in its inclusion in the Motor Carrier Management Information System (MCMIS) database. According to Department of Transportation officials at the Land Transportation Standards Subcommittee briefing last November, the database has been set up for Mexican carriers, but it is not yet "populated" with information.²⁵ Therefore, the database is likely to provide little or no data on a particular carrier.

While the Land Transportation Standards Subcommittee (LTSS) declares that Mexican carriers are being added to the database,²⁶ simple inclusion in the database is not nearly sufficient. Inspection data and crash data are necessary for any evaluation of the safety record of a carrier, and no evidence is available that Mexican authorities are entering this data. According to oral statements of a member of Congress at a recent press conference, very little has been added about Mexican carriers on the Mexican side.

Safety information from Mexico is not comparable to U.S. data.

Even if data is entered into the database, the information gathered from Mexican reports, such as an out-of-service rate, is not likely to reflect the safety of the carrier by U.S. standards. The Mexican standards are weaker and the inspection standards remain voluntary until later this summer. Once the border is opened, the U.S. will retain little leverage with Mexico, and the FMCSA will have no way to improve any shortcomings that affect data or the lack of data on the Mexican side.

Difficulties that the U.S. has encountered in implementing MCMIS will likely pose problems for Mexico as well.

The MCMIS database, used to evaluate carrier and driver safety in the U.S. has presented a number of difficulties during use. It is foreseeable that Mexico will encounter similar problems. Discrepancies and deficiencies in the ways that different state enforcement agencies have entered or coded data in the database have affected the accuracy of the Safety Status Measurement System

²⁵ Statements of Tom Kosloski, 11/28/2000.

²⁶ Department of Transportation Office of the Inspector General report MH-2001-059, "Interim Report on Status of Implementing the North American Free Trade Agreement's Cross-Border Trucking Provisions," May 8, 2001, at 18.

(SafeStat) scores of carriers.²⁷ SafeStat scores are important in evaluating the safety fitness of carriers and detecting “at risk” carriers. Delays also present problems, because SafeStat weighs accidents that occurred within the last 6 months three times more than accidents that occurred in the last 18 months or longer.²⁸ In fact, a significant proportion of the crashes reported in 1997 were reported after the period in which they would have been weighed the most heavily.²⁹ U.S. law enforcement has been working on reducing the delay of information added to the database, but Mexico would likely experience similar problems with delays.

If Mexican authorities do not enter complete information, the data will be extremely inadequate. The Inspector General’s office found in an audit of MCMIS that less than 40 percent of the crashes entered into MCMIS for the U.S. in 1997 identified the carriers involved.³⁰ The same IG report also found that MCMIS contains no information on cause or fault in its crash data;³¹ if this information is not supplied on the Mexican side, the FMCSA will have no way to recover it.

A new law will penalize U.S. commercial drivers for poor personal driving records but will likely not be practically applicable to Mexican drivers, reducing the effectiveness of the law and allowing Mexican drivers a competitive advantage over their American and Canadian counterparts.

A rule recently proposed by FMCSA would disqualify the commercial drivers licenses of drivers who are convicted of violations like drunk driving, leaving the scene of an accident, violating railroad-highway grade crossing signs, excessive speeding, and reckless driving, regardless of whether the offense was committed while driving a personal vehicle or a commercial vehicle.³² However, the MCMIS database will not carry information regarding Mexican drivers’ private driving records, making it impossible for FMCSA to enforce this law with respect to Mexican drivers. To enforce this law with respect to U.S. drivers but not Mexican drivers would be unfair to U.S. commercial drivers, creating a

²⁷ Department of Transportation Office of the Inspector General report TR-1999-091, “Motor Carrier Safety Program,” April 26, 1999, 19-24.

²⁸ *Id.* at 25.

²⁹ “During FY 1997, 31 percent of the crashes were uploaded more than 180 days after the crash date.” *Id.* at 25.

³⁰ *Id.* at 21.

³¹ *Id.* at 25-26.

³² 66 Fed. Reg. 22499; “The FMCSA estimates that nearly 500 CMV-related crashes would be avoided annually as a result of these disqualifications.” Department of Transportation press release, FMCSA 9-01, May 4, 2001.

competitive disadvantage far beyond the foreseen consequences of NAFTA.

C. The proposed safety monitoring program is too weak to deter non-compliance. It also provides an 18-month safe harbor for Mexican-domiciled carriers.

Administrative difficulties will greatly hamper enforcement.

The proposed safety monitoring program is not likely to motivate carriers to comply with all regulations before the 18-month period expires. If the FMCSA is overwhelmed with applications, unable to conduct the number of safety reviews in a timely manner, or unable to keep track of suspended carriers, a carrier may operate indefinitely under hazardous conditions. Registration is so infrequently checked that finding a truck operating with suspended or revoked registration will be like finding a needle in a haystack. The consequences for carriers operating on a revoked or suspended license are neither certain nor serious.

The rules create an 18-month safe harbor for Mexican carriers and drivers.

In contrast to the NAFTA panel's ruling that Mexican-domiciled carriers could be subject to special provisions, the penalties for Mexican-domiciled carriers under the safety monitoring program are weaker than those that currently apply to U.S.-domiciled carriers.

Proposed section 385.23 provides a list of violations that are likely to result in an expedited safety review or deficiency letter. These violations include serious infractions such as using drivers lacking proper qualifications,³³ operating vehicles that have been placed out of service without correcting the fault, involvement in accidents leading to a hazardous materials incident, using drivers testing positive for drugs and alcohol, and operating a vehicle that is not insured.³⁴ For any one of these serious violations, a carrier would receive a safety review — a review to which it would have to submit anyway — or a deficiency letter instructing the carrier to notify FMCSA in writing that the problem has been corrected.

The consequences of violations such as these for U.S. carriers are considerably more severe,

³³ Section 385.23(a)(1): "Using drivers not possessing, or operating without, a valid Licencia Federal de Conductor (LFC) or Commercial Driver's License (CDL). A non-valid LFC or CDL includes one that is falsified, revoked, expired, or without a Hazardous Materials endorsement, when required." 66 Fed. Reg. 22415 (May 3, 2001) at 22419.

³⁴ Section 385.23(a)(6): "Operating within the United States a motor vehicle that is not insured as required by 49 CFR part 387."

including civil and criminal fines or even jail time.³⁵ Allowing Mexican carriers to receive weak penalties for serious violations fails to communicate the seriousness of these violations to carriers and will not prepare them to comply with these regulations at the end of the safety oversight program.

A number of serious violations were omitted from the proposed program, compromising safety and placing U.S. carriers at a market disadvantage.

The FMCSA has also omitted some serious violations from the list of violations that would trigger an expedited safety review or deficiency letter. Under its proposal, an accident resulting in a hazardous materials incident prompts the expedited safety review or deficiency letter process, but an accident resulting in death does not. Furthermore, a violation of the hours of service limit is not on the list of violations that would result in an expedited safety review or deficiency letter. The hours of service limit is of particular concern because Mexican carriers often require their workers to drive for much longer periods per day than the U.S. statutory hours of service limit, and Mexican laws do not include hours of service rules.³⁶ The FMCSA should add these infractions to the list, and publish its plan for enforcing hours of service limits for drivers crossing the border who are not subject to any time controls while in Mexico.

³⁵ Penalties for U.S. drivers and carriers are more severe: “The Federal penalty to a driver who violates the CDL requirements is a civil penalty of up to \$2,500 or, in aggravated cases, criminal penalties of up to \$5,000 in fines and/or up to 90 days in prison. An employer is also subject to a penalty of up to \$10,000, if he or she knowingly uses a driver to operate a CMV without a valid CDL.” FMCSA website: <<<http://www.fmcsa.dot.gov/safetyprogs/cdl.htm>>>

The corresponding regulation for insurance of U.S. carriers, 49 CFR 387.17 states: “Any person (except an employee who acts without knowledge) who knowingly violates the rules of this subpart shall be liable to the United States for civil penalty of no more than \$10,000 for each violation, and if any such violation is a continuing one, each day of violation will constitute a separate offense. The amount of any such penalty shall be assessed by the FHWA's Associate Administrator for the Office of Motor Carriers, by written notice. In determining the amount of such penalty, the Associate Administrator, or his/her authorized delegate shall take into account the nature, circumstances, extent, the gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.”

³⁶ “Almost all Mexican long-haul drivers are forced to work dangerously long hours.” Also, “Industry analysts say that after the ban is lifted, most of the two nations’ trade will be done by Mexican drivers, who come much cheaper than American truckers because they earn only about one-third the salary and typically drive about 20 hours per day.” Robert Collier, “Mexico’s Trucks on Horizon: Long-distance haulers are headed into U.S. once Bush opens borders,” *San Francisco Chronicle* 3/4/2001.

Enforcement of penalties for carriers in the safety oversight program is weak and uncertain.

The safety oversight provision has no teeth. The rule does not specify a time limit for the carrier to address the problem and respond to the deficiency letter. During that interval, the carrier would be operating in spite of documented safety concerns. A deficiency letter, or FMCSA's intention to conduct a safety review sooner, does nothing to keep an unfit carrier off the road and does not communicate to the carrier the severity of the violation. Is an uninsured carrier allowed to operate while the safety review or deficiency letter process is going on? The agency must clarify its plan for ensuring that non-compliant carriers do not continue operating under hazardous conditions.

If a carrier fails to respond to the agency's deficiency letter, that carrier's registration may be suspended until corrective action is taken. If a carrier fails the safety review, the carrier's registration will be suspended until it takes corrective action. If the carrier does not take corrective action, or if the carrier operates in violation of a suspension order, the carrier's registration may be revoked following notice and an opportunity for a proceeding.

However, this rule does not specify a time limit for the carrier to respond to the deficiency letter before a suspension is issued. It is also unclear how soon after a violation an expedited safety review would take place. Without time limits, an unsafe carrier could operate indefinitely before any limitations are placed on it. The rule does not specify how long a carrier can be suspended without taking corrective action before its registration is revoked. The agency must clarify this rule and set definite time restrictions to ensure that non-compliant carriers do not slip through the cracks.

No system is in place at the border to enforce the suspension or revocation of operating authority.

The agency's suspension or revocation of a license will not change a carrier's ability to send trucks across the border. A November 1999 IG report found that, while suspension and revocation notices were sent to carriers, the carriers nevertheless were able to retain their certificates in their vehicles and continue operating across the border.³⁷ No information is available to inspectors to verify that a certificate of registration is valid, or to verify that a driver has a certificate of registration if he or she is not able to present it upon request.

D. Trucks crossing the border are not likely to be inspected because border facilities lack the resources and inspectors to step up inspections.

The vast majority of cross-border trucks are not inspected at the border.

³⁷ Office of the Inspector General Audit Report TR-2000-013: "Mexico-Domiciled Motor Carriers." Nov 4, 1999, at 9.

About 1% of all trucks crossing the border are inspected.³⁸ The overwhelming majority of these inspections are cursory “walk-around” inspections. Trucks that are not inspected at the border will not likely be checked for a certificate of registration. Even if a truck is inspected, there is no information available to an inspector to verify that a certificate of registration is valid, or to verify that a driver has a certificate of registration if he or she is not able to present it upon request.

Border officials do not routinely check the registration of cross-border trucks.

Only federal inspectors and California state inspectors routinely check certificates of registration at the border. U.S. Customs officials and other state inspectors do not routinely check certificates of registration.³⁹ Many border crossings do not have full-time federal inspectors or federal inspectors present during all hours of operation. If a truck is not inspected by a federal inspector, it is much less likely to have its certificate of registration checked

A substantial inspection presence may deter non-compliance.

Unsafe and non-compliant trucks that attempt to cross the border are not likely to be detected. There is a direct correlation between the lack of inspectors or full-time inspectors at a border crossing and the out of service rate of trucks that use that crossing.⁴⁰

Border facilities still lack resources to inspect an adequate proportion of trucks crossing the border.

³⁸ Department of Transportation Office of the Inspector General audit report TR-2000-013, “Mexico-Domiciled Motor Carriers,” Nov 9, 2000, at 10.

³⁹ “State inspectors in Arizona, New Mexico, and Texas did not routinely review the certificates of registration because State laws are not compatible with Federal requirements regarding operating authority. According to State officials in these three border States, legislation has not been initiated to provide for enforcement against a motor carrier for operating without a certificate of registration or for operating beyond the authority granted. Consequently, unless the truck happens to be selected for a safety inspection by a Federal inspector at the border, the certificate of registration will probably not be reviewed.” *Id.* at 16.

⁴⁰ “A direct correlation exists between the condition of Mexican commercial trucks entering the United States and the level of inspection resources at the border. California has an inspection presence during all operating hours at its two major crossings and inspects each commercial truck that does not have a valid inspection sticker (Commercial Vehicle Safety Alliance sticker valid for 3 months). The condition of the Mexican commercial trucks entering at the Mexico-California border is much better than those entering through all other border States.” *Id.* at 7.

Currently, border crossings do not have the resources to inspect every truck at the border. In the absence of a comprehensive Mexican regulatory system, the border crossings present the only opportunity for the U.S. to filter out non-compliant, unregistered, uninsured, or unsafe trucks before they can travel U.S. highways.

Border crossings need many more federal inspectors.

The number of federal inspectors at the border is less than half the 139 inspectors the IG called for in 1998.⁴¹ While 60 inspector positions have been authorized and funded, only 50 inspectors had been hired as of March 27, 2001.⁴² The estimate of 139 inspectors was based on 1998 numbers for truck crossings. The volume of NAFTA traffic has increased since 1998, however, and that estimate did not include the inspectors needed for the 18-month proposed safety reviews.⁴³

⁴¹ “FMCSA increased the authorized number of inspectors at the southern border from 13 in FY 1998 to 60 in FY 2001 and requested *80 additional enforcement personnel* in its FY 2002 budget request. ... Deploying the additional 80 enforcement personnel at the border would bring the total number of authorized Federal inspectors there to 140, and be responsive to the recommendation in our 1998 report. If these 80 enforcement personnel are not deployed onsite at the border in the near term, sufficient inspectors will not be in place at all border crossings during all hours of commercial vehicle operations except for California’s two major crossings at Calexico and Otay Mesa.” (emphasis in original). Department of Transportation Office of the Inspector General report MH-2001-059, “Interim Report on Status of Implementing the North American Free Trade Agreement’s Cross-Border Trucking Provisions,” May 8, 2001, at 3.

Funding for the additional 80 federal inspectors has been struck from the Transportation Spending bill, *see note.2*.

⁴² “As of March 27, 2001, FMCSA filled 10 of the 20 FY 2001 inspector positions, resulting in a total of 50 Federal inspectors assigned to the southern border.” Department of Transportation Office of the Inspector General report MH-2001-059, “Interim Report on Status of Implementing the North American Free Trade Agreement’s Cross-Border Trucking Provisions,” May 8, 2001, at 9.

⁴³ “Our 1998 estimate of 126 additional Federal inspectors for the U.S.-Mexico border is conservative because it was an estimate for the near term, and did not:

- C include the amount of time an inspector would be away from work for training and approved absences,
- C allow for expanded hours for commercial port operations,
- C account for continued commercial traffic growth,
- C include providing inspectors to perform only visual inspections of trucks or electronic verification of Commercial Driver’s Licenses (the capability to electronically verify Mexican Commercial Driver’s Licenses is now available to Federal inspectors at the U.S.-Mexico border), and

The proposed safety oversight program will strain the inspection forces at the border.

The proposed rule creates the need for additional inspectors to perform the safety reviews of carriers either at a point within the U.S. or at the place of business of carriers in Mexico.⁴⁴ The FMCSA is still short of the federal inspectors it needs to conduct truck inspections at the border, however, and the proposed rules do not include estimates as to how many additional inspectors are needed for the on-site safety reviews. The proposed rules do not estimate the amount of time each safety review would take, or the size of the workload attributed to a single inspector. Workloads would be exacerbated by the time and cost of traveling to places of business within Mexico. The greater the time and cost of each inspection, the longer carriers will operate without a thorough safety review.

Inspection facilities are sorely inadequate.

While plans have been made, no new border inspection facilities have been built since 1998.⁴⁵ A recent study has documented that border crossings lack Internet connections, inspection space, and space to park out-of-service vehicles. In a May 2001 IG report, investigators visited the 27 border crossings and found: at 20 crossings, FMCSA inspectors did not have dedicated phone lines to access databases, such as those for validating a CDL; at 19 crossings, FMCSA inspectors had space to inspect only 1 or 2 trucks at a time; and at 14 crossings, FMCSA inspectors had only 1 or 2 spaces to

C include inspectors to perform visual inspections of passenger buses and safety inspections for commercial bus drivers. Four port cities accounted for 80 percent of about 269,000 passenger bus crossings at the U.S.-Mexico border in FY 2000 (Otay Mesa and San Ysidro, California; and Hidalgo and Laredo, Texas).”

Department of Transportation Office of the Inspector General report MH-2001-059, “Interim Report on Status of Implementing the North American Free Trade Agreement’s Cross-Border Trucking Provisions,” May 8, 2001, at 11.

⁴⁴ “In addition to performing safety inspections, an FMCSA official said that the resources will be used to perform safety audits of motor carriers as proposed in the Motor Carrier Safety Improvement Act of 1999 and also to review applications requesting authority to operate in the United States. The FMCSA official further stated that, ‘as the Agency assesses the volume of applications for operating authority and begins to conduct safety reviews of Mexican carriers, flexibility will be required to deploy enforcement personnel to perform critical safety oversight tasks,’” Department of Transportation Office of the Inspector General report MH-2001-059, “Interim Report on Status of Implementing the North American Free Trade Agreement’s Cross-Border Trucking Provisions,” May 8, 2001, at 10.

⁴⁵ Department of Transportation Office of the Inspector General report MH-2001-059, “Interim Report on Status of Implementing the North American Free Trade Agreement’s Cross-Border Trucking Provisions,” May 8, 2001, at 12.

park vehicles placed out of service. Also, the out-of-service space was shared with the inspection space at the majority of these crossings.⁴⁶ The FMCSA must address these serious shortcomings before the volume of cross-border traffic increases under the proposed rules.

E. Insurance and proof-of-insurance requirements are dangerously inadequate to protect other drivers on public highways.

The applicant need not submit proof of insurance with the application. Carriers operating in the border commercial zones need only carry proof of insurance with them when they cross the border. It is unclear whether U.S. Customs officials, state or federal inspectors will routinely check for proof of insurance. Carriers operating beyond the border zones must submit insurance forms only after notice of their applications appear in the federal register. This process does not do anything to guarantee that registration will not be granted to an uninsured carrier.

While a Mexican carrier may have a general level of insurance, Mexican carriers sometimes transport a combination of freight and passengers, or freight and hazardous materials. These different shipping practices carry different required insurance levels, and a carrier may only meet the lower insurance level, thus creating a hazard for other drivers.

F. New problems will arise after completion of the 18-month safety oversight program.

Once the safety oversight program is completed, and a carrier's registration becomes permanent, the oversight of Mexican carriers is considerably reduced. Serious violations, such as using unqualified drivers or drivers testing positive for drugs or alcohol, operating vehicles that have been placed out of service without correcting the violation, and involvement in accidents involving hazardous materials will not prompt a safety review. It is unclear whether, or for what infraction, a Mexican-domiciled carrier's registration could be suspended or revoked after the safety oversight program is complete. The agency must clarify what circumstances would lead to the suspension or revocation after the 18 month period has expired.

Lawfully imposed U.S. penalties may trigger conflicts.

When Mexican drivers and carriers encounter the full force of U.S. regulations, conflicts will result. Assuming that the normal statutory penalties would begin to apply once the registration is permanent, drivers and carriers would be subject to the same civil and criminal penalties to which U.S. drivers and truckers are subject.

However, when the Nogales border inspectors began inspecting trucks crossing the border and fining Mexican drivers when the trucks failed to comply with safety regulations, a group of Mexican

⁴⁶ Id. at 14.

truckers protested, blocking the border crossing at Nogales for eight hours.⁴⁷ The drivers, who receive twenty to thirty dollars per border crossing, had been fined up to \$1,400 each because their vehicles did not comply with safety regulations. The workers protested that they should not be fined for the condition of their vehicles, but U.S. law requires that truck drivers be responsible for inspecting their vehicles before they begin operations, and provides for the issuance of fines to both drivers and carriers when trucks are placed out of service.

U.S. penalties will be particularly hard on Mexican drivers, who are typically compensated at lower rates than drivers in the U.S. This incident illustrates a conflict that could become more pronounced as far more Mexican drivers encounter the enforcement of U.S. safety regulations.

IV. Non-border states are completely unprepared for the influx of Mexican trucks.

Trucks that are not inspected at the border are unlikely to be checked at any point beyond the border for certificates of registration. A November 1999 Office of the Inspector General report noted that, in FY 1998, 202 Mexican-domiciled motor carriers were found operating outside of their authority beyond the commercial zones in the border states, and 52 motor carriers were found operating outside of their authority in 20 non-border states.⁴⁸ The trucks, which were supposed to travel only within commercial zones at the border, were found in North and South Dakota, Washington state, New York, New Jersey, and Florida.⁴⁹ These trucks were detected only because they had been selected for roadside inspections.

Much of the data that the safety oversight program and safety review will depend on is the safety data gathered and entered into the database from roadside inspections in the U.S. However, the likelihood that a truck will be selected for a roadside inspection in the U.S. is small. Trucks are usually selected for roadside inspections on the basis of visual clues that they may not comply with safety standards or if their carrier has been selected for closer monitoring on the basis of its SafeStat score. The SafeStat scoring system is not generally accurate for small carriers because they do not generate enough data, and most Mexican carriers are small carriers.

If a truck operating without authority or outside of its authority does not appear to have physical defects, it is unlikely to be stopped at all. Inspectors in non-border states are much less likely to check

⁴⁷ “Truck driver threatening to block port again over fines,” Associated Press, 4/11/2001. *See also* “U.S. Strangling ‘Cruzadores,’ Truckers say,” Hernan Rozemberg, The Arizona Republic, 4/22/2001.

⁴⁸ Department of Transportation Office of the Inspector General Audit Report TR-2000-013, “Mexico-Domiciled Motor Carriers,” Nov 4, 1999, at iii.

⁴⁹ *Id.* at iii.

certificates of registration, because the non-border states lack state laws banning Mexican-domiciled trucks from operating without registration or operating outside of their authority.⁵⁰ Roadside inspectors cannot place a Mexican-domiciled vehicle out of service simply because it is operating without registration or operating outside of its authority.⁵¹

An inspector may issue an out-of-service order for other violations meeting the necessary criteria or issue a fine for operating outside of authority, but while the fine limits for operating outside of authority have been raised, the actual assessed fines have remained the same, in the range of \$500-\$1000, an amount that a carrier could view as a cost of doing business.⁵² There are few safeguards to monitor Mexican trucks operating beyond the border in the interior U.S.

V. The proposed rules present significant hidden economic costs for the U.S., utilizing government funds to subsidize the private sector.

The opening of the border under this proposed rulemaking will be costly to the United States economy in that it increases the probability of costly accidents and places all the expense of insuring Mexican compliance on U.S. border and road inspection resources.

Mexican drivers and commercial carriers can, under the proposed rules, procure a marketplace advantage under the 18-month safety monitoring program. While they are in this program, they need not follow hours of service laws, and penalties for drivers and carriers for violating other laws are only as costly as correcting the violation. U.S. carriers in the same circumstances face fines, disqualification, or even time in jail.

⁵⁰ “After foreign motor carriers go past the border in California, state inspectors review certificates of registration during roadside inspections throughout the state. We found no evidence to indicate that any other states review certificates of registration during roadside inspections. Consequently, unless the truck happens to be selected for a safety inspection by a Federal ... inspector at the border, the certificate of registration will probably not be reviewed.” Office of the Inspector General Audit Report TR-2000-013: “Mexico-Domiciled Motor Carriers.” Nov 4, 1999, at 10.

⁵¹ Office of the Inspector General Audit Report TR-2000-013: “Mexico-Domiciled Motor Carriers.” Nov 4, 1999, at 11-12.

⁵² “The Motor Carrier Safety Improvement Act of 1999 provides increased fines for foreign motor carriers operating without authority. The increased fines are not more than \$10,000 for an intentional operating authority violation and not more than \$25,000 for a pattern of intentional operating authority violations. FMCSA’s assessed fines have remained constant since 1998, averaging \$500 to \$1000 for operating authority violations.” Department of Transportation Office of the Inspector General report MH-2001-059, “Interim Report on Status of Implementing the North American Free Trade Agreement’s Cross-Border Trucking Provisions,” May 8, 2001, at 16.

According to Department of Transportation calculations on the costs of truck crashes, just an additional 1,000 truck crashes resulting from this proposal would cost over \$100 million, in addition to the intangible costs of injury and death. Even if the administration increases inspectors and their facilities at the border in an effort to avert disaster, the measure would amount to the U.S. performing the enforcement function of the laws that Mexico put on the books and is obligated to enforce under NAFTA.

VI. Conclusion.

While the administration purports to require Mexican-domiciled carriers to adhere to the same safety standards as American carriers, the application process in the proposed rules indicates that its lofty goals are only accomplished on paper. Numerous failings in the current registration process for Mexican-domiciled carriers that were found and reported by the DOT Inspector General have not been addressed or even acknowledged in the proposed rules.

The DOT is willing to do on paper what it is not willing to do in practice. Requiring only that carriers promise to know and follow regulations and failing to verify the information supplied by the carrier will place the public at risk. Under the proposed rules, FMCSA would evaluate carriers' fitness for registration on paper before granting them authority, not conducting an actual on-site safety fitness review until after operating authority has been granted and the carriers have begun cross-border operations.

The effectiveness of the entire truck safety oversight program depends on the deterrent effect of suspension or revocation of certificates of registration, but certificates of registration are rarely checked and cannot be verified at the border. While FMCSA can suspend or revoke the registration on paper, it has no enforcement system in place to prevent carriers with suspended or revoked registration from operating across the border in practice. With the opening of the border, the impact of these failings will significantly increase.

The evaluation of the safety records of Mexican-domiciled carriers will depend in large part on the completeness and reliability of information supplied to the safety database on the Mexican side. We have no evidence to indicate that data is being entered promptly, completely, or accurately on the Mexican side, and no way to insure that its database programs are or will be implemented or funded in the future. The DOT relies on the MCMIS to analyze safety information and raise red flags for dangerous carriers in the U.S. If the database is not administered as conscientiously on the Mexican side, these same safeguards will be rendered ineffective for Mexican-domiciled carriers.

Opening the border under the proposed rules will seriously compromise the safety of the public on U.S. highways. The lax enforcement of U.S. regulations will give Mexican-domiciled carriers a competitive advantage over U.S.-domiciled carriers. If FMCSA does not address and correct the systemic problems outlined in a number of reports by the Office of the Inspector General, it need only

wait until the inevitable crash occurs. Public safety must not suffer under NAFTA, and indeed the NAFTA dispute panel gives the U.S. full authority to firmly enforce U.S. law for any truck traveling in the U.S.

VII. Recommendations.

The proposed rules must be rejected in favor of a plan that provides for extensive verification of safety fitness and an enforcement infrastructure to ensure that Mexican-domiciled trucks meet U.S. safety regulations and to deter noncompliance. Such a plan should:

- ! As a precondition for granting operating authority, provide an application process in which statements made by carriers on paper applications are verified and unannounced, on-site safety inspections of the carriers occur;
- ! As a precondition for granting operating authority, establish a proficiency test for all foreign carriers through which their knowledge of U.S. operating standards may be verified;
- ! As a precondition for granting operating authority, set minimum amounts of inspection, crash and other performance and enforcement data that must be in the database for a applicant carrier, i.e., enough to allow a SafeStat score to be calculated;
- ! Clarify the consequences, time-line, and oversight resources needed to monitor suspended and revoked registrations and carrier responses to deficiency letters;
- ! Strengthen inspection forces at the border. This should include inspection facilities with adequate space to conduct inspections and place vehicles out of service, drive-through weigh-in-motion systems, and dedicated phone lines for access to databases. This should also include a substantial increase in the number of federal inspectors at the border — enough to ensure that a significant proportion of trucks are inspected at the border;
- ! Increase coordination with state inspectors to facilitate the enforcement of certificates of registration and operating authority, and to ensure that border crossings are staffed with adequate numbers of inspectors at all hours of operation.