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Docket Management  
U.S. Department of Transportation  
Room PL-401  
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- 1) **Comments of Public Citizen Regarding FMCSA-98-3299:- 241**  
**Safety Monitoring System and Compliance Initiative for Mexico-Domiciled Motor Carriers Operating in the United States**
  
- 2) **Comments of Public Citizen Regarding FMCSA-98-3298:**  
**Application by Certain Mexico-Domiciled Motor Carriers to Operate Beyond United States Municipalities and Commercial Zones on the United States-Mexico Border**

### *Introduction*

Public Citizen wishes to offer comments and suggestions regarding the two Interim Final Rules (IFR) listed above, published by the Federal Motor Carrier Safety Administration (FMCSA). The administration's plans to open the Mexico-U.S. border to long-haul commercial motor carrier traffic by the beginning of June has made the proper framing of the safety issues surrounding the opening of the border absolutely critical. The agency must resolve all of the meritorious issues raised in the comments it receives from the public on these rulemakings despite the compressed timetable it has arbitrarily set for itself. There are many open questions that must be addressed before the agency will be ready to permit long-haul commercial traffic to cross the border.

Public Citizen paid two visits to the U.S.-Mexico border region in recent months. We visited 5 different U.S. cities with commercial border crossings, entered two separate border stations, witnessed a Level 1 inspection being conducted on a Mexican carrier, and spoke with FMCSA inspectors, their supervisors, and state authorities.

Our trips have convinced us that while the staff at the border may be interested in safety, they clearly do not have the resources to cope with a dramatic expansion of traffic volume. The facilities needed to perform a substantial number of inspections have not been built: out-of-service areas, inspection bays with pits so that inspectors can see the underside of a truck, and data networks to enable inspectors to quickly retrieve information about drivers, carriers, and trucks are all lacking. The land needed to build those facilities has not been identified or acquired in some cases.

We will offer our specific observations throughout these comments in the interest of facilitating FMCSA's readiness to manage the opening of the border. The Administration, however, should not open the border until it effectively answers all of the concerns we and other commentators raise and fulfills the new responsibilities assigned to it by Congress.

#### *Timing of the rulemaking and other actions by FMCSA*

Public Citizen is profoundly concerned that the time line that the agency has set for itself – all driven by the Administration's stated intent to open the border in June 2002 – is inadequate to carry out the responsibilities entrusted to it by Congress. The border states will experience a considerable impact on their security, environment, and safety due to the dramatic increase in the volume of truck traffic from Mexico. It is crucial that the transition to an open border be as safe and careful as possible.

All of our information, including data gathered during visits to the border inspection stations, suggests that the border inspectors and inspection stations are months, if not more than a year, away from being ready for the increased volume of traffic that will result from lifting the moratorium. The agency should not make bad policy out of haste. FMCSA should place safety ahead of all other considerations and grant itself ample time to review all of its pending rules and their implications. The 2002 Department of Transportation Appropriations Act assigned several new responsibilities to the agency just last December and it is not clear to us that FMCSA is ready to handle them.

Reports have indicated that FMCSA planned to complete in final form the operations manual governing the processing of applications by April 15<sup>th</sup>. If this is true, it suggests that the agency is not following its legal obligations regarding comments filed pursuant to these IFRs. FMCSA will receive filed comments that legally require consideration and a response from the agency by the April 18<sup>th</sup> deadline. If the manuals are already complete, it will be impossible to incorporate these comments in a way that will impact operations in the field. FMCSA should cease producing final documents that will govern the opening of the border until all relevant rulemaking has been completed.

## *1. The Proposed Safety Monitoring System*

The broad outlines of the proposed safety monitoring system adhere to the requirements of the 2002 Department of Transportation Appropriations Act (PL 107-87, Section 350). However, there are several areas that the agency has left ambiguous or unaddressed that could lead to confusion and harm if they are not clarified prior to the opening of the border. There are also several organizational challenges that must be met by FMCSA before the border should be opened.

*FMCSA does not explain **how** it **will** verify Mexican drivers' logbooks*

FMCSA currently has no system in place for corroborating the hours listed in the logbooks kept by Mexican drivers. Assessing the honesty and accuracy of these logbooks will be critical for enforcing hours-of-service laws for Mexican carriers.

Currently, FMCSA determines whether a U.S. driver has complied with hours-of-service laws by using hotel receipts and other documentation to corroborate what has been entered in his or her logbook. Drivers entering the U.S. from Mexico will likely possess none of this documentation and will face no similar enforcement regime in Mexico. Mexico's domestic hours-of-service law is brand new and not specifically aimed at truckers. There is no evidence that these laws are being observed or enforced in Mexico. Consequently, FMCSA must have a system for examining and corroborating logbook entries. When Public Citizen visited the border and asked the staff there whether a plan had been implemented regarding hours-of-service verification, we learned that no such plan was in place.

The issue of logbook verification has not yet been addressed by FMCSA, although it may be the most critical safety issue related to the opening of the border. In its Notice of Proposed Rulemaking (NPRM) of May 2, 2000, FMCSA estimates that "755 fatalities and 19,705 injuries occur each year on the Nation's roads because of drowsy, tired or fatigued CMV drivers." If the logbooks of Mexican drivers cannot be verified, they may be falsified, placing other highway users at risk of being severely harmed or killed by a driver from Mexico who falls asleep or loses attention at the wheel.

FMCSA must address this issue in its final rule and explain how it intends to enforce U.S. hours-of-service laws for Mexican drivers who are stopped for inspections at the border and elsewhere. Congress placed special emphasis on hours-of-service laws in the 2002 Department of Transportation Appropriations Act (PL 107-87, Section 350 (I)(c)(1)(d)) and the agency should enforce the laws according to the enacted wishes of Congress. In fact, if the Department of Transportation Inspector General (IG) finds that FMCSA has failed to "implement a policy to ensure compliance" with hours-of-service laws, the border cannot be opened. At this moment, the IG would have to make such a

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<sup>1</sup> "Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations," Federal Motor Carrier Safety Administration, May 2, 2000, Federal Register vol. 65, 25540.

finding. FMCSA cannot avoid this critical requirement. It must put an effective system in place – something it has yet to even state its intent to do.

In order to demonstrate its seriousness regarding hours-of-service laws, FMCSA should treat hours-of-service violations as a trigger for an expedited safety review. Counting them toward a company's out-of-service rate, as the agency plans to do, buries a central safety concern within another system and may be misleading as to small firms, compounding the problem of identifying violators. Since Congress has asked for special attention to be placed on hours-of-service violations, and since FMCSA recognizes that tired truckers represent a serious threat to safety, the agency should add repeated hours-of-service violations to its list of offenses triggering an expedited review and a call for corrective action.

*Planned border staff increases are inadequate*

The problem of understaffing was initially described by the IG in May 2001 and has since been reemphasized by the General Accounting Office (GAO) in its report on the U.S.-Mexico border.<sup>23</sup> To date, FMCSA has not shown that it has the level of staff needed to verify the licenses of 50 percent of the drivers who cross the border (as mandated by Congress), perform inspections on a significant number of vehicles, and perform both safety audits and on-site compliance reviews. During Public Citizen's observational trips to the border, we have noted that the portion of trucks that is inspected is very small and the border staff is stretched thin.

FMCSA states that it "intends to hire over 200 people" for the purpose of staffing the border, conducting inspections, and conducting safety audits. It does not describe how many inspectors are currently employed or discuss how much progress has been made in the hiring process. FMCSA believes that hiring this number of people will be enough to assure that it can meet its legal responsibilities. But having enough staff is only a part of the solution to adequately manning the border. Once the staff has been hired, it must be trained, deployed efficiently, and coordinated with state-level inspectors. The GAO report noted that "federal and state officials have not yet agreed on the level of staffing needed at temporary and permanent truck inspection facilities to achieve safety goals."

FMCSA has not explained whether the planned staff increase will be adequate for handling the increased volume of traffic and the necessary inspections. It has an affirmative duty to provide a detailed explanation of the adequacy of staffing for each task. As it is, inspectors currently visually inspect only a fraction of trucks that cross the border. Trucks are selected randomly for inspection at the border, and a single inspector may perform just 6 or 7 Level 1 inspections each day. FMCSA has not yet released its

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<sup>2</sup> "Interim Report on Status of Implementing the North American Free Trade Agreement's Cross-Border Trucking Provisions," Department of Transportation Inspector General, May 8, 2001. The IG found that 126 additional inspectors needed to be hired and called this a "conservative number...based on conditions in 1998."

<sup>3</sup> "Coordinated Operational Plan Needed to Ensure Mexican Trucks' Compliance with U.S. Standards," General Accounting Office, December 2001.

staffing depth analysis, and so its claim to be well prepared in this area is certainly unverifiable and premature. If it is not known what levels of staff will be required, the agency is not in a position to claim that “this significant augmentation of our existing staff at the southern border will enable us to fully comply with our safety monitoring responsibilities.” (67 FR 12766)

Public Citizen has observed the inadequate conditions of staffing and facilities at the border and we believe the agency has the obligation to more explicitly describe how it intends to hire, train, and allocate its staff in time for the planned opening of the border to long-haul commercial traffic. The agency must also describe its plans for coordinating staff activities with those of the state inspectors to provide for the most efficient coverage of truck traffic.

FMCSA must plan to visually inspect each truck as it crosses the border according to a set of well-justified criteria. The random selection of trucks for inspection does not reflect the patterns and high out-of-service rates for Mexican carriers, nor does it offer inspectors guidance in selecting the most questionable vehicles for further inspection. The state of Texas is developing a sophisticated model of traffic patterns that will allow them to allocate staff to meet these goals, and FMCSA should prepare something equally comprehensive.

The agency has not described how it will coordinate with Mexican inspectors to perform on-site inspections, since the Mexican government has stated that it will only allow these inspections in the presence of one of its own inspectors. Any staffing plan that the agency settles upon must take into account realistic estimates of the staff-hours that sending inspectors to Mexico will consume. The agency should avoid the error of planning to have individual inspectors perform both onsite inspections and inspections at the border, as the jobs are distinct and will require staff trained and deployed for one job only.

Public Citizen would like to raise the issue of the scarce space at border inspection stations in these comments. In its report, the GAO noted that some federal border areas have no spaces to perform truck safety inspections and many more have no spaces for placing trucks out of service. While these rulemakings do not directly address this issue, the availability of space for facilities and staff is an underlying factor in all future decisions regarding personnel and border capacity.

Our visit to the border areas found that there was only momentary and highly contingent arrangements with the U.S. Customs Service to secure space near border areas for inspection; including space for out-of-service vehicles; and that space was highly limited, in some cases even by the natural landscape surrounding the border. These conditions create a haphazard atmosphere which will greatly undermine DOT’s efforts to secure the border if left unaddressed. For example, DOT officials informed us that, due to heightened security since September 11<sup>th</sup>, the need for space by U.S. Customs had increased, and that Customs officials would, as their needs dictate, ask DOT inspection officials to clear out of borrowed space at a moment’s notice. This is

unacceptable. Prior to opening the border, FMCSA must demonstrate that it has leased or purchased sufficient land to carry out its responsibilities to inspect trucks and place them out of service or all of its efforts at improving staffing will be thwarted by poor planning.

*Drug and alcohol testing must include verification of results – FMCSA fails to provide an update regarding certification of Mexican testing laboratories*

The regulations in the IFR state that FMCSA will “[v]erify [that] a controlled substances and alcohol testing program” exists as part of the safety audit conducted prior to granting provisional operating authority. (Appendix A to subpart E of part 365, III (a)(1)) Creation of a testing program is worthless unless FMCSA is able to verify that drivers who fail those tests are removed from duty. FMCSA should clarify that the safety audit will include verifying that a system of notification has been implemented by Mexican carriers whereby drivers who fail drug and alcohol tests will be removed from duty.

As of May of 2001, Mexico had no laboratories that were U.S.-certified for drug testing. In its rulemaking, FMCSA does not address whether this fact has changed, although a lack of certified labs would be an obstacle to opening the border. The GAO report noted that “Mexican officials plan to obtain certification for a Mexican federal government laboratory to conduct drug and alcohol tests by 2002,” (GAO-02-238, 26) but FMCSA does not say whether this will take place in time for testing to occur prior to the border being opened in June 2002. If the Mexican government is unsuccessful, other arrangements will have to be made by Mexican carriers to meet U.S. requirements and it is unclear how they would accomplish this. FMCSA should explain in its final rule how it intends to verify compliance with U.S. drug testing requirements, given that many Mexican companies may not have access to a certified lab. If the existence of and access to certified labs by Mexican carriers can not be verified by June 1, 2002, the border should not be opened.

*FMCSA should require carriers to show inspectors a written policy regarding critical safety areas during their safety audits and compliance reviews*

Nowhere in the draft regulations does FMCSA state that it will require carriers to have a formal written policy describing their procedures and policies in key areas of compliance. In issuing its final rule, FMCSA should clarify this by stating that carriers will not be granted provisional operating authority unless FMCSA can *verify, including an examination of a written policy statement*, that the carrier has designed and implemented an adequate safety program in each of 5 areas currently listed in Appendix A to subpart E of part 365, III (a)(1-5).

*The use of “Conditional” ratings is confusing and should be clarified*

Public Citizen is concerned about FMCSA’s planned use of the “Conditional” safety rating for Mexican carriers who show clear deficiencies in their safety

management abilities. Because of the other shortcomings of FMCSA's planned safety management system, most notably the inadequacy of its staffing plan, we are concerned that the Conditional rating will be used as a fallback, whereby carriers will be granted Conditional status and left to languish because the staff resources are not robust enough to evaluate their efforts and move them from Conditional to either Satisfactory or Unsatisfactory. We ask that FMCSA more clearly explain how they plan to use the Conditional rating and show that there will necessarily be a limit to the length of time over which a carrier can sustain this rating.

*Unconscionably, the agency still does not consider a fatal accident to be cause for an expedited review*

Public Citizen noted with dismay in our comments to the NPRM that FMCSA did not intend to treat a fatal crash as sufficient cause for conducting an expedited safety review. FMCSA responded to this complaint by noting that "Mexico-domiciled motor carriers will be subject to existing FMCSA policy regarding crashes," whereby a crash involving two or more fatalities would automatically trigger a Crash Inquiry. FMCSA states that because most Mexican carriers will not have a rating in the SafeStat system, they will then automatically be subjected to an expedited compliance review. (67 FR 12765)

This system is not appropriate for use with Mexican carriers with little operating experience in the United States. A single fatality crash might signal an operational safety problem just as acutely as a multiple-fatality crash – the distinction here seems utterly arbitrary, as the outcome could turn on whether a vehicle struck by a Mexican truck contained one passenger or two. The agency should not rely on the conjunction of both a multiple-fatality crash and the lack of a safety rating in the FMCSA database to trigger a compliance review. We ask that the agency revise this policy to treat a fatal crash at least as seriously as it would treat the use of a driver without a valid license.

*It is unclear whether the agency is receiving and/or will receive adequate cooperation from the Mexican government*

FMCSA states in the IFR that "Mexico's motor carrier safety regulatory system lacks several of the components that are central to the U.S. system." Cooperation between FMCSA and the Mexican government is going to be crucial if the burdens of maintaining U.S. truck safety standards are not going to overwhelm U.S. inspectors. Nowhere in the IFRs does FMCSA discuss the need for an operational plan or provide a sketch of how one might be devised.

*FMCSA has not devised a system for verifying the legitimacy of insurance cards carried by truck drivers from Mexico*

Because of considerable differences between the American common law and Mexican civil legal systems, U.S. drivers who are involved in crashes with uninsured Mexican drivers will have a very difficult time collecting damages, if such collection

does not prove to be impossible. In addition, localities, states and federal authorities may be left with an expensive clean-up and liability bill if a negligent carrier causes damage to government property or spills hazardous materials requiring extensive clean-up. Consequently, it is absolutely crucial for U.S. inspectors to verify proof of insurance at the border. The IFR does not mention any way in which this could be accomplished; and indeed, inspection officials at the border informed us that methods of verifying insurance merely included an “eyeball” check for obvious fraud on the face of documents.

This is clearly insufficient. The admission of trucks for longhaul trucking triggers a significant change in the insurance requirements which will apply to Mexico-domiciled carriers, as they will no longer be permitted to purchase only short-term insurance. This change in coverage requirements, which also brings on ongoing duties to correct the record of financial responsibility requirements at the federal level after changes in the carrier’s insurance coverage, should be far more prominently featured in the application forms. In addition, verification of the validity of insurance arrangements should be treated as a critical part of any safety audit or compliance review. At both stages of review, evaluators should contact the state insurance authorities in the state in which the insurance carrier is licensed and verify that coverage is accurate and that the insurer is validly licensed by the state.

Moreover, inspectors performing a Level I inspection should be required to check the validity of insurance by verifying it against the federal record on insurance coverage for that carrier. This would provide a true incentive for carriers to update the federal records on coverage, as they are required to by law. In addition, to protect the public penalties must be severe. Companies whose drivers present falsified insurance documents should immediately lose their license to operate and be ineligible from reapplying for operating authority. Heavy fines should also be assessed against the carrier and any accomplices they may have had in perpetrating the attempted fraud. Stiff penalties might deter some companies from trying to squeak by without insurance, but only comprehensive oversight can prevent determined operators from doing irreparable harm.

### ***Out-of-service standards are flawed***

The out-of-service standard that FMCSA plans to use to determine compliance during a safety audit and the standard that FMCSA plans to use to determine whether a carrier passes its compliance review are different – there is no reason that this should be the case.

Under the proposed Appendix A to subpart E of part 365, IV(i), a carrier receives one point on its safety audit for having an out-of-service rate of 34 percent or higher. The same carrier, once it has been granted provisional operating authority, will be allowed to have an out-of-service rate on its vehicles of 50 percent without triggering any action by FMCSA. Public Citizen does not see any reason for lowering the compliance bar for a carrier that has been granted provisional operating authority.

FMCSA has not explained this difference in compliance levels. We ask that FMCSA reduce the out-of-service rate for triggering a deficiency letter and expedited safety review to 34 percent during a carrier's conditional operating period.

Finally, the one-size-fits-all out-of-service criteria are flawed. Carriers with fewer than three vehicles that receive regular out-of-service orders may never be subject to disciplinary action because the number of orders they receive may never trip the threshold level of 3 in a 90-day period. Since 90 percent of Mexican carriers are owner-operators with one or two trucks, FMCSA should be concerned with adequately regulating this group. There should be some form of stratification of the standard, such that smaller carriers are held as accountable for the safety of their vehicles as are larger carriers. FMCSA should revisit the system it has designed for limiting operating authority based on out-of-service rates and design a new system that accounts for small carriers that receive frequent out-of-service orders.

*FMCSA has not addressed the prospect of CVSA sticker fraud*

Reports from California indicate that some trucks attempt to cross the border there with a valid CVSA sticker attached to a door that is a color that does not match the color of the rest of the truck. The suspicion is that stickers are switched from truck to truck by exchanging doors. This practice is problematic because the DOT ID number is also stenciled on the door, meaning that an inspector has no easy way of proving or disproving suspicions about this practice by cross-checking the number on the sticker with the number on the door. Public Citizen suggests that the agency require that CVSA stickers be adhered to the windshield of the vehicle in question to make the practice of sticker-switching more difficult.

*The weigh-in-motion (WIM) count required by Congress may not be honored*

On Public Citizen's visit to the border in El Paso, we were informed that the WIM scale there was to be counted toward the total of five that Congress required be in operation before the moratorium on cross-border traffic could be lifted. We also discovered that this scale had a readout display only *underneath* the bridge, where no one could see it. It was not being monitored by anyone, and federal officials we spoke with said that checking weights was a state responsibility. No one we spoke with, including state representatives, knew of any plans to attach the scale to a useful display. We are concerned that this represents a disregard for the intent of Congress, which was to assure motorists that Mexican carriers would not be overburdened when they enter the U.S. FMCSA should investigate this matter (and look into the condition and usefulness of all WIM scales) and discuss how they will be certain the scales are being used as intended.

*II. Many of the changes to the OP-1(MX) form and application process are inexplicable*

Public Citizen has noted several changes to the OP-1(MX) form – the form Mexican carriers will complete to apply for operating authority – as proposed by

FMCSA. Some of these are addressed in the IFR (at 67 FR 12702 *et seq.*), but some were made without comment by the agency and require some explanation.

Below is a list of the changes that will affect safety so significantly that FMCSA must provide an explanation for its decision to alter them:

- *Removal of commitment to follow OSHA regulations* – The version of the OP-1(MX) form published in the Federal Register on March 19, 2002 contained, within its “Compliance Certifications” section (at 66 FR 22413), two requirements that the applicant must certify as follows:
  - 1) Applicant is willing and able to comply with all applicable statutory and regulatory requirements administered by the U.S. Department of Labor, or by a state agency operating a plan pursuant to Section 18 of the Occupational Safety and Health Act of 1970 (“OSHA state plan agency”) including, but not limited to, requirements of the Occupational Safety and Health Act, the Surface Transportation Assistance Act, and the Fair Labor Standards Act.
  - 2) Applicant is willing and able to produce for review or inspection documents (including employment, timekeeping, payroll, safety and health, and training records) which are requested for the purpose of determining compliance with applicable statutes and regulations administered by the U.S. Department of Labor and OSHA state plan agencies within 48 hours of any written request. Applicant understands that the written request may be served on the person identified in the attachment for Section V, number 6, or the designated agent for service of process

But in the “Compliance Certifications” section published in the IFR (67 FR 12753), FMCSA has inexplicably dropped both of these requirements from the table. This removal was not discussed in the IFR and Public Citizen knows of no reason why the agency would choose to remove these requirements for granting operating authority. Safe operation of motor carriers requires that drivers and other carrier personnel work in a safe environment, as guaranteed under U.S. law by OSHA regulations. American motorists will be put at risk by drivers who are working in unsafe or unhealthy environments. Congress demonstrated its desire for the agency to be especially vigilant about work safety regulations when it required that the Inspector General verify that FMCSA had a system in place for verifying that Mexican carriers were in compliance with hours-of-service laws prior to allowing the opening of the border. (PL 107-87, Section 350 (I)(c)(1)(d))

Removing the requirements for intent to comply with labor standards and intent to document compliance places the lives of drivers and other motorists at risk. We strongly urge the agency to reinsert the above requirement.

- The agency removed a requirement that applicants submit a completed IRS Form 2290 with their application. Public Citizen knows of no reason (and the agency does not offer one) why this requirement should be abandoned. Retaining this requirement provides an opportunity for double-checking the number of trucks that an applicant claims to use on our highways. While some applicants may not have paid the tax in the past because they have not operated in the U.S., many have been operating in the border zones for several years and should be required to certify that they have complied with our tax laws during that time. We ask that FMCSA reinstate the requirement.
- FMCSA removed the section (formerly at 66 FR 22386) of the application instructions notifying applicants that they must obtain state registration in the state in which they will conduct the majority of their operations. Applicants must by law participate in the single state registration system (SSRS) or other registration systems maintained by the various states. These instructions are not captured by simply referencing “additional information,” as implied by the sentence (at 67 FR 12726) replacing the language used in the NPRM. We ask that the agency return the original language to the paragraph in question.
- FMCSA removed question 4, which inquires whether the applicant is domiciled in Mexico, from the application detailed in the NPRM. It also removed question 5, which asks the applicant whether it is owned or controlled by persons of Mexican residency. While these questions (both at 66 FR 22393) may seem redundant given the other information that the form requests, the need for double-checking this information is important. Many of the pending applications for operating authority from Mexican-domiciled carriers list both a U.S. and a Mexican contact address, and some list only a U.S. address.

It is important that Mexican-domiciled and Mexican-owned carriers identify themselves accurately so they are channeled through the correct application process. Because the authority-granting procedures for Mexican and U.S.-domiciled and controlled carriers differ substantially, a U.S. domiciled carrier that mistakenly applies under the OP-1(MX) form will face substantially different procedures in their first years of operations. Public Citizen asks that FMCSA reinsert questions 4 and 5.

- FMCSA has removed the “Ownership and Control” section of the previous OP-1(MX) form (at 66 FR 22393) and replaced it with a “Form of Business” section (at 67 FR 12730) that requires substantially less information about an applicant’s ownership group. Whereas the previous section required the applicant to list the names, country of residence, and citizenship of all of the principal officers and stockholders in a corporate carrier, the new form simply requires the applicant to submit the name and state of incorporation of the corporation.

The earlier provisions would be useful in screening out carriers that lose operating authority and then quickly reincorporate themselves under another name with the same ownership. Public Citizen believes that the problem of name switching could

become serious enough that it merits special attention. We ask that FMCSA reinsert the ownership and control reporting requirements.

- FMCSA has changed from 5 to 3 years the length of time over which a carrier must review its drivers' employment and driving histories. (66 FR 22398 and 67 FR 12736) Public Citizen sees no reason why the agency should reduce this requirement so substantially. The agency offers no reason for its decision. We ask the agency to reverse this change.
- FMCSA has removed a requirement that applicants have a system in place to require each driver to report all of his/her criminal convictions within 30 days of occurrence. Public Citizen finds no reason why the agency should eliminate a requirement that would help keep criminally inclined or negligent drivers off of U.S. roads. FMCSA has already initiated rulemaking that would subject U.S. drivers who commit criminal motor vehicle offenses while driving a non-commercial vehicle to having their commercial licenses revoked. It states in the NPRM for this rule that eliminating the crashes likely to be caused by these dangerous drivers would save approximately \$268 million (in injuries, deaths, and property value) over 10 years. (See 66 FR 22499, May 4, 2001)

This provision is especially important in light of the fact that the MCMIS database will not carry information regarding the private driving records of Mexican drivers. The agency offers no reason for its decision to remove this requirement, and we ask that the requirement (formerly included at 66 FR 22398) be reinserted.

*Other problems with the proposed OP-1(MX) forms.*

*The application still only has a "yes" box next to obligations*

Our final comment on the OP-1(MX) application is that its design does not offer the honest applicant opportunity for reflection on whether he has really complied with all that is required of him. Section V, "Safety Certifications," still only offers the applicant the opportunity to check "Yes" in response to whether he will be able to meet the requirements asked of it before it commences operations in the United States. There is no checkbox for a "No" response. This fact met with derision when it was discussed in Congress during hearings and testimony last summer, and should have been corrected by the agency.

All applicants should be forced to confront a choice between "Yes" and "No" for each response, or completing the list will be a formality requiring no thought or reflection on an applicant's actual safety capabilities. Applicants who check "No" and are denied operating authority, then check "Yes" on later application attempts and receive a safety audit will have created a record that inspectors can use to focus on areas where the applicant has already admitted a likely deficiency. There is no cost associated with

adding a “No” box to each obligation, so FMCSA should make this change on the final OP-1 (MX) forms.

### *Conclusion*

In summary, Public Citizen finds that FMCSA has still not addressed many of the potential problems associated with developing an application and safety monitoring system for Mexican-domiciled carriers responsive to the demands placed upon it by the planned lifting of the moratorium. The application process does not go far enough in verifying the intent and ability of Mexican-domiciled carriers to comply with U.S. safety regulations, and in some areas the agency has retreated from critical areas of enforcement and oversight since the NPRM. The proposed safety monitoring system is not internally consistent and may not be robust enough to serve as a counterweight to the lack of real safety regulation in Mexico.

Public Citizen **asks** that FMCSA revisit the areas we have highlighted above and take the time needed before issuing final rules that could unnecessarily put the lives of truck drivers and other motorists at risk. The opening of the U.S. border to Mexican truck traffic could have dramatic effects on the economy of the border region – these effects should not be coupled with traumatic effects on the safety of American drivers.