



May 31, 2007

Mr. John H. Hill, Administrator
Federal Motor Carrier Safety Administration
U.S. Department of Transportation
1200 New Jersey Ave., SE
Washington, DC 20590

**Comments on Demonstration Project on NAFTA Trucking Provisions, Request for
Comments, 72 FR 23883, Docket No. FMCSA-2007-28055**

Dear Administrator Hill:

Public Citizen appreciates the opportunity to comment on the proposed pilot program for Mexico-domiciled trucks. We are at a significant disadvantage to adequately comment on the pilot program, because of the agency's refusal to share information with the public. In addition to the considerable safety concerns, the Federal Motor Carrier Safety Administration (FMCSA) has not been transparent in communicating the procedures for this pilot program, and this lack of transparency coupled with the unusual brevity of the program is alarming. We are greatly concerned about the proposed pilot program.

In light of H.R. 2206 which was enacted May 25, 2007, there are more new requirements than previously applied when the notice was originally published. Not only has FMCSA failed to comply with the requirements of earlier law, but now with new requirements, FMCSA must clearly issue a new notice that provides detailed information about its plans for the pilot project in accordance with H.R. 2206. We urge the agency not to show the same diffidence in its next notice.

From the outset, the Department of Transportation's (DOT) plan appears to be a calculated, cynical move intended to ensure that the border is open to all commercial traffic regardless of the implications for highway safety. It is not a coincidence that the Secretary of Transportation announced an abbreviated test period that includes just 100 hand-picked Mexico-domiciled trucking companies -- a select group of motor carriers which may not be representative of all Mexico-domiciled carriers. It is obvious that the Department's intention on making the decision to open the border before 2008. To achieve that goal, the decision would have to be made before sufficient safety data could be collected for accurate and complete analysis.

**FMCSA Has Not Provided the Public With Necessary Information to Adequately
Comment.**

The agency has not provided sufficient information for the public to competently comment on the adequacy of its plans. Advocates for Highway and Auto Safety (Advocates) requested information regarding the administration's plan in October 2006, in a FOIA filed in

March, Advocates and Public Citizen filed suit to secure relevant documents a to which the agency has failed to properly respond. In response to a separate lawsuit filed by Public Citizen and environmental and labor groups requesting a public comment period on the pilot program, FMCSA finally filed a public notice, but still has not submitted detailed information.¹ Public Citizen is submitting comments jointly with these groups in addition to these comments. Among the needed records for adequate public comment are all documents regarding any and all FMCSA activities to consider or develop the pilot program, in particular the following:

- All records detailing the pilot program and the allocation of funds needed to properly carry out the program;
- The pre-authorization audits by FMCSA of Mexico-domiciled carriers required by section 350;
- The process by which the Secretary of Transportation may revoke authority of carriers to operate in U.S.;
- Notice of specific measures to protect public health and safety;
- Measures to enforce minimum proficiency in English required by law;²
- Specific standards by which the agency will evaluate the program;
- Penalties to be levied for violations;
- A list of the federal motor carrier safety laws for compliance with the Secretary will existing Mexican law, and an accompanying explanation of the difference between the Mexican and U.S. laws.

The Department of Transportation has requested a two-year stay on the FOIA request, due to the voluminous records compiled for the response. The comment period should accordingly be extended until the documents have been made available for public inspection and comment.

Additionally, the most recent Inspector General audit of FMCSA's readiness to begin the pilot program is needed to assess whether the necessary improvements have been made by Mexico-domiciled carriers. It was scheduled to be released this spring.

None of this information is currently available to the public, and therefore it is nearly impossible to competently comment on the adequacy of the administration's plan for the pilot program. No standards have been published for what the agency will deem a success. The pilot program is intended to serve as a show-piece under NAFTA in order to permit the Secretary to justify opening the Southern border to long-haul truck commerce before the end of 2008.

Moreover, the agency has not provided information required as a matter of law. The agency's notice does not provide the information required under 49 USC 31315(c)(1) or 31315(c)(2)(F). Citing the relevant statutory language:

§ 31315(c) Pilot programs.

The Secretary may conduct pilot programs to evaluate alternatives to regulations relating to, or innovative approaches to, motor carrier, commercial motor vehicle, and driver safety. Such pilot programs may include exemptions from a regulation prescribed under this chapter or section 31136 if the pilot program contains, at a

minimum, the elements described in paragraph (2). The Secretary shall publish in the Federal Register a detailed description of each pilot program, including the exemptions to be considered, and provide notice and an opportunity for public comment before the effective date of the program.

The section continues with specific items that must be made public:

- (2)(B) A specific data collection and safety analysis plan that identifies a method for comparison
- (C) A reasonable number of participants necessary to yield statistically valid findings.
- (D) An oversight plan to ensure that participants comply with the terms and conditions of participation.
- (E) Adequate countermeasures to protect the health and safety of study participants and the general public.
- (F) A plan to inform State partners and the public about the pilot program and to identify participants to safety compliance and enforcement personnel and the public.

The notice FMCSA published to the Federal Register on May 1, 2007 does not include any of this information. Advocates for Highway and Auto Safety has been attempting to acquire this information from the agency since October 2006 when it filed a Freedom of Information Act request, to which the agency has not replied.³ On March 13, 2007, Advocates sued DOT and FMCSA and still has not received the information requested.

The Department of Transportation announced its intention to implement this pilot program in February of this year,⁴ and then two weeks later, at a hearing before a Subcommittee of the Senate Appropriations Committee, Secretary of Transportation Mary Peters stated that she intended for procedures to be in place within 60 days of the announcement.⁵ Senator Patty Murray requested that the Department of Transportation and the Federal Motor Carrier Safety Administration submit the details of plans for the pilot program as soon as possible to the Senate Appropriations Committee.⁶ The Committee had not received the plans as of mid-May this year.

Even though there are clear statutory requirements for the implementation of pilot programs,⁷ FMCSA has so grossly ignored its mandates that the Senate Appropriations Committee took action to prevent such a pilot program from being implemented six years ago.⁸ In the intervening years, the agency has not published information about how it would implement a pilot program, information about the carriers that have applied for broader authority, or specific information about audits conducted on Mexico-domiciled carriers. The public has never been given an adequate opportunity to comment on the pilot program.

This particular pilot program is unusual in that it will only be carried out for one year, instead of three.⁹ It is therefore particularly important that the public have a chance to comment

on how the pilot program will be evaluated. Since the number of carriers to be included in the program is small, and the time is shorter than usual, it is vital that the public know what the procedures the agency will take to analyze the data.¹⁰

FMCSA should extend the comment period until after the necessary information has been provided to the public. We've included a letter from Reps. James Oberstar and Peter DeFazio, requesting that the comment period be extended at Appendix 1.

FMCSA's Record Overseeing Motor Carrier Safety Does Not Inspire Confidence.

The agency has not met safety goals for which it was formed in 1999. Significant safety regulations have been unanimously overturned by the courts. National Transportation Safety Board (NTSB) member Debbie Hersman was quoted in February, "[FMCSA] lack[s] the inspectors to conduct safety review of at-risk domestic carriers. That situation only gets worse if resources are diverted to the border."¹¹ The NTSB has also criticized FMCSA's poor record of compliance reviews in testimony before the Senate Commerce, Science and Transportation Committee on May 1, 2007: "The Safety Board has documented several instances in which carriers have received favorable compliance review ratings despite long and consistent histories of driver- and vehicle-related violations."¹²

The haphazard manner in which this pilot program has been executed does not suggest that FMCSA will be able to live up to its promise of checking "every truck, every time." Senator Robert Bennett voiced his concern that FMCSA would not be able to live up to this promise in a March 8, 2007 hearing of the Senate Appropriations Committee.¹³ In response to these concerns, Secretary Peters responded that the pilot program would employ dedicated inspectors, and that the participating motor carriers would display labels designating them as participants of the program.¹⁴ Considering that FMCSA has not been able to effectively monitor the safety compliance of U.S. motor carriers, the claim that the agency is adequately equipped to implement this pilot program is disingenuous.

The agency has provided no details about how it will choose the 100 carriers for the pilot program. It is improper to hand-pick a sample that may not be representative of the 14,000 carriers currently encountered. On the basis of the ongoing poor safety record of border-zone operations by Mexico-domiciled motor carriers, DOT asks that we accept on faith that companies from Mexico hand-picked to participate in the pilot program will be radically different from the companies currently encountered in the border zone.

The number of compliance reviews conducted by FMCSA of Mexico-domiciled carriers is less than one percent of carriers operating in the border zone. Of 14,000 Mexico-domiciled carriers, only 108 compliance reviews were done in 2005.¹⁵ FMCSA claims that "[e]ach vehicle will be checked for a valid CVSA decal *every time* it enters the U.S., and the validity of each operator's driver's license will also be checked."¹⁶

FMCSA has limited resources and inspectors to handle the burden of conducting compliance reviews of U.S. trucks. As a result FMCSA has demonstrated little capacity to conduct compliance reviews of *any* trucks – neither U.S.-based trucks, nor Mexico-based

carriers. In 2003, 12,000 compliance reviews were conducted out of 670,000 registered carriers – this amounts to just two percent of carriers.¹⁷

It will be difficult to differentiate participants in the pilot program from carriers operating only in the commercial zone, and this difficulty is likely to cause delays to both pilot program participants as well as non-participants. The Secretary of Transportation explained that participants will be issued decals to identify them; however, given the limited personnel at the border, it is likely that some trucks will failed to be checked.¹⁸

The agency has presented no description of how it intends to enforce the “every truck every time” policy it outlaid in its request for comments. Additionally, the notice does not suggest that new inspectors will be hired to undertake the burden, nor is there an estimate of what the burden to inspectors would be to carry out these compliance reviews.

The Safety Concerns Outlined in the Murray-Dorgan-Feinstein Amendment Have Not Yet Been Met by Mexico-Domiciled Carriers.

Section 350 of the 2002 Department of Transportation Appropriations Act requires that Mexico-domiciled motor carriers meet minimum safety criteria before the border can be opened to drivers from Mexico beyond the commercial zone. These safety concerns include:

- **Driver Violations:** Truck drivers stopped on U.S. highways have high out of service rates for drivers operating without a driver’s license, failure to have the proper license for the type of vehicle being operated, and failure to have hours-of-service logbooks and records of duty status required by U.S. law.
- **Vehicle Violations:** Vehicles have been found with high rates of improperly adjusted brakes and inoperable lamps.
- **Drug and Alcohol Testing:** Mexico does not require workplace drug testing of truck drivers. In addition:
 - There are no certified laboratories for drug and alcohol testing in Mexico.
 - Samples therefore have to be sent to the U.S. for testing.
 - The DOT Inspector General cannot verify collection procedures meet U.S. standards for quality, purity, and security.
 - Samples collected at the border may be more reliable; however, this defeats the purpose of random testing.
- **Hours of Service:** Mexico has no enforced hours of service requirements, and drivers do not keep records of hours of service. Drivers can operate for unlimited hours within Mexico and arrive at the border fatigued, and with no record of their hours of service.
- **Hazardous Materials:** The U.S. and Mexico have not reached agreement on movement of hazardous materials from Mexico into the U.S. and beyond the commercial zone. The transport of hazardous materials has been excluded to evade the fact that safety concerns have not been addressed.

Additionally, FMCSA has not completed on-site safety inspections required by the amendment. Safety inspections of Mexico-domiciled carriers were on-going after the original

date on which the border was to be opened for the pilot program, and procedures had not been submitted for review.

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

The Inspector General's January 2005 report says that data from states were lacking on driver convictions and license suspensions. Coupled with the fact that the states are not prepared to place drivers and vehicles out of service for Mexico-domiciled carriers, there is significant worry that violations that are already occurring are going unreported, and that violations that could occur during the pilot program would also go unreported.¹⁹ The Inspector General also raised concerns about data quality, citing a 2004 report on the SafeStat system, which found "problems with the quality of the data in SafeStat that FMCSA used to rank motor carriers for review. . . .Based on an analysis of data from our prior audit, Mexican motor carriers show a greater number of these data quality problems, on average, than U.S. carriers. . . ." ²⁰

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

Section 350 requires documented proof that cross-border foreign drivers comply with all U.S. commercial driver requirements for drug and alcohol testing.²¹ Additionally, this compliance is required by the statutory mandates for pilot programs: "the Secretary shall require, as a condition of approval of the project, that the safety measures in the project are designed to achieve a level of safety that is equivalent to, or greater than, the level of safety that would otherwise be achieved. . . ." ²² Currently, Mexico does not have any labs certified to perform drug and alcohol testing, and has been sending samples to the United States for testing.²³

Operating under this situation hinders the ability of the agency to conduct random drug and alcohol use reviews. Under the pilot program, it will be necessary for both the Mexican and U.S. governments to have clear chain-of-custody and collection procedures to ensure that samples are being properly collected and are as rigorously collected as samples taken from domestic carriers. The January 2007 audit by the Office of the Inspector General also noted that the need for certified labs will increase and that FMCSA should continue work with DOT's Office of Drug and Alcohol Policy Compliance to establish these protocols.²⁴

In addition to concerns about drug use, there are also concerns about whether drivers meet the physical fitness requirements to operate large trucks that are required by the United States. FMCSA has acknowledged in pending rulemaking that commercial drivers will select health care providers who will find them physically fit to operate commercial motor vehicles.²⁵ These same concerns carry over the border, and there is concern about the quality of the medical examinations and physical fitness requirements for commercial driver's licenses in Mexico.

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

FMCSA issued an interim final rule requiring state inspectors to place drivers and vehicles operating without authority out of service, but the states are not using the authority.²⁶ Many states are still not ready to address truck commerce from Mexico. Dozens of states are not placing Mexico-domiciled trucks out of service when they are caught operating outside the commercial zone. While the states have the authority to place Mexico-domiciled vehicles out of service, their unenthusiastic enforcement undermines the safety goals of Section 350.

State enforcement capacity has not been improving with any rapidity. In 2002 only California and Arizona could enforce operating authority, and three years later, only two more states were prepared.²⁷ Of states that had adopted the rules required by FMCSA's 2002 interim final rule, 14 reported that there were problems with implementation.²⁸ In the latest Inspector General audit, "[o]nly 4 states reported being prepared to place vehicles out of service."²⁹ The glacial pace of states acquiring the ability to place vehicles out of service is indicative of the pace at which all involved parties have prepared for opening the Southern border. Before the border can be opened to carriers permitted to operate beyond the commercial zone, FMCSA should ensure that the states can handle the burden they are already failing to shoulder.

Many states are not putting domestic carriers out of service. FMCSA itself recognizes this problem. Its FY 2008 budget outlines the goals for the Performance and Registration Systems Management (PRISM) program state that "[f]or FT 2007, PRISM grants will ensure that 25 PRISM states enforce their legislative authority to suspend, deny, or revoke vehicle registrations based on Federal out-of-service orders."³⁰

Both domestic and Mexico-domiciled carriers are being insufficiently monitored for compliance. Against this backdrop of poor safety performance and poor federal oversight of the states, the DOT is proposing a pilot program that would allow 100 Mexico-domiciled carriers to operate through the United States, and potentially never be reviewed.

Ensuring that Mexico-Domiciled Carriers Comply with U.S. Regulations Will Require Special Rules.

Mexico-domiciled participants of the pilot program will be required to comply with U.S. safety standards including hours of service, medical requirements, financial responsibility, drug and alcohol testing, size and weight limits and the ability of drivers to communicate in English.³¹ Some of these regulations do not currently exist in the Mexican system, and therefore, carriers participating in the program will be required to adhere to new regulations. In some cases, such as hours of service compliance and drug and alcohol testing, there will need to be significant coordination of efforts on the parts of both governments, which may give rise to procedures that do not exist independently in either country.

Mexico-Domiciled Carriers Must Have Electronic On-Board Recorders to Monitor Hours of Service.

Mexican regulations governing trucks do not include hours of service limits or records. Drivers do not keep logbooks like the ones kept in the U.S.³² Commercial vehicles entering the U.S. from Mexico should have electronic on-board recorders installed to ensure that drivers entering the U.S. have some record of hours of service, by which compliance with U.S. hours of service regulations can be determined.

Mexico-Domiciled Carriers Threaten Cabotage Rules.

The states are not ready to place drivers out of service for vehicle and driver violations. These same states cannot effectively enforce cabotage rules.³³ In statements made before the Senate Appropriations Committee Charles Parfey of the Independent Drivers Association remarked, “We can't even enforce the cabotage rules of the Canadian carriers, how are we going to do it with the Mexican drivers?”³⁴ Once a driver crosses the border, he will encounter minimal enforcement of such regulations. Under these conditions, a Mexico-domiciled driver would become an attractive option for shippers, brokers and freight forwarders. These drivers could travel effectively unchecked point-to-point through the United States, creating an effectively unregulated labor force. This prospect raises significant safety concerns.

Conclusion

FMCSA has not provided the necessary information for the pilot program to be legally implemented. The agency has been flagrantly contemptuous of its responsibility to ensure the safety of highway users with respect to motor carriers. The Department of Transportation has had 14 years to conduct the necessary discussions with the Mexican government, conduct the necessary audits, and make the plans for a pilot program; however, in March of this year these plans were still not available for public review.

We are deeply disappointed with the agency for its lack of transparency in putting together this pilot program. Forcing through a haphazard pilot program, which is conducted in a way unlike any legitimate pilot program, in violation of the statutory mandates for such a program exposes the disingenuousness of this agency in its regulation of motor carrier safety. Everything about this process has been grossly inadequate. There must be a new notice and comment period as a result of the new requirements under H.R. 2206.

Sincerely,

Joan Claybrook
President, Public Citizen

¹ 72 FR 23883, 23886. May 1, 2007.

² 49 CFR 391.11(b)(2).

³ “House Votes to Require Bush Administration’s NAFTA Trucks Proposal to Comply With Congressional Safety Mandates,” Press Release of Public Citizen and Advocates for Highway and Auto Safety, May 15, 2007.

⁴ “New Program to Allow U.S. Trucks into Mexico for the First Time Ever, Change Way Some Mexican Trucks Operate Within the United States,” Press Release of Department of Transportation. February 23, 2007. Available at: <http://www.dot.gov/affairs/cbtsip/dot2107.htm>.

⁵ Remarks of Secretary Mary Peters. Senate Committee on Appropriations, Subcommittee on Transportation, Housing and Urban Development and Related Agencies, Hearing on Crossborder Trucking, March 8, 2007.

⁶ Remarks of Sen. Patty Murray. Senate Committee on Appropriations, Subcommittee on Transportation, Housing and Urban Development and Related Agencies, Hearing on Crossborder Trucking, March 8, 2007.

⁷ 49 USC 31315(c).

⁸ P.L. 107-87, December 18, 2001.

⁹ 72 FR 23883.

¹⁰ *Ibid.*

¹¹ Miller, Leslie. “Critics Bash Mexican Truck Decision,” AP Online, February 24, 2007.

¹² Testimony of Mark Rosenker, Chairman National Transportation Safety Board before the Senate Committee on Commerce, Science and Transportation, Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security. May 1, 2007.

¹³ Remarks of Sen. Robert Bennett. Senate Committee on Appropriations, Subcommittee on Transportation, Housing and Urban Development and Related Agencies, Hearing on Crossborder Trucking, March 8, 2007.

¹⁴ Remarks of Secretary Mary Peters. Senate Committee on Appropriations, Subcommittee on Transportation, Housing and Urban Development and Related Agencies, Hearing on Crossborder Trucking, March 8, 2007.

¹⁵ FMCSA Motor Carrier Management Information System (MCMIS) December 22, 2006 snapshot, available at: <http://ai.fmcsa.dot.gov/International/border.asp?cvar=mc&sy=2005&redirect=Compliance.asp>.

¹⁶ 72 FR 23883, 23884, (emphasis added).

¹⁷ Remarks of Annette Sandberg, September 14, 2004. Available at: <http://www.fmcsa.dot.gov/about/news/speeches/busassociation-091404.htm>.

¹⁸ Remarks of Secretary Mary Peters. Senate Committee on Appropriations, Subcommittee on Transportation, Housing and Urban Development and Related Agencies, Hearing on Crossborder Trucking, March 8, 2007.

¹⁹ “Follow-Up Audit of the Implementation of the North American Free Trade Agreement’s (NAFTA) Cross Border Trucking Provisions,” Federal Motor Carrier Safety Administration, Report No. MH-2005-032, Office of Inspector General, United States Department of Transportation, January 3, 2005.

²⁰ *Ibid.*

²¹ P.L. 107-87, December 18, 2001.

²² 49 USC 31315(2)(c).

²³ “Follow-Up Audit of the Implementation of the North American Free Trade Agreement’s (NAFTA) Cross Border Trucking Provisions,” Federal Motor Carrier Safety Administration, Report No. MH-2005-032, Office of Inspector General, United States Department of Transportation, January 3, 2005.

²⁴ *Ibid.*

²⁵ 71 FR 66723, November 16, 2006.

²⁶ 67 FR 55162, Aug. 28, 2002.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ “Follow-Up Audit of the Implementation of the North American Free Trade Agreement’s (NAFTA) Cross Border Trucking Provisions,” Federal Motor Carrier Safety Administration, Report No. MH-2005-032, Office of Inspector General, United States Department of Transportation, January 3, 2005.

³⁰ Budget Estimates Fiscal Year 2008, Federal Motor Carrier Safety Administration, at 3B-15.

³¹ 72 FR 23884.

³² DeJarnette, Kenneth R.. *Trucking Problems at the US-Mexico Border*, Congressional Research Service Report. 1998.

³³ “Follow-Up Audit of the Implementation of the North American Free Trade Agreement’s (NAFTA) Cross Border Trucking Provisions,” Federal Motor Carrier Safety Administration, Report No. MH-2005-032, Office of Inspector General, United States Department of Transportation, January 3, 2005.

³⁴ Remarks of Charles Parfey, Member of the Board of Directors of the Independent Drivers Association. Senate Committee on Appropriations, Subcommittee on Transportation, Housing and Urban Development and Related Agencies, Hearing on Crossborder Trucking, March 8, 2007.



U.S. House of Representatives
Committee on Transportation and Infrastructure

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May 25, 2007

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The Honorable Mary E. Peters
Secretary
United States Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590

VIA FAX (202) 366-7202

Dear Secretary Peters:

Yesterday, Congress approved a Conference Report on H.R. 2206, a bill making supplemental appropriations for military operations, which awaits the President's signature.

As you are aware, this bill includes language that will impact the cross-border pilot program proposed by the Department of Transportation ("DOT") to grant Mexico-domiciled motor carriers operating authority in the United States beyond the border zones. Section 6901 of the Conference Report requires DOT to publish specific information in the *Federal Register* and provide sufficient opportunity for public notice and comment.

On May 1, 2007, the Federal Motor Carrier Safety Administration ("FMCSA") published a notice in the *Federal Register*, which summarized the structure and parameters of the proposed DOT cross-border pilot program. The comment period for this notice will close on May 31, 2007. To comply with the requirements in H.R. 2206, we believe DOT must issue a new notice in the *Federal Register* with additional details on the Department's planned enforcement and oversight measures, as well as the actual findings and data from each pre-authorization safety audit of a carrier that will participate in the pilot program.

As outlined below, the Committee is renewing its request for records and documents related to the pilot program. Further, it is our understanding that the Department has not responded to a Freedom of Information Act ("FOIA") request submitted by highway safety groups on October 17, 2006. Making this information publicly available, as required by law, is essential for the public to respond to the Department's request for comments in an informed way. We therefore urge that the comment period under the current *Federal Register* notice, and any future notice and request for comments published in response to H.R. 2206, remain open for at least two weeks after the Department complies with the FOIA request.

In a letter dated March 30, 2007 to Under Secretary Shane, the Subcommittee on Highways and Transit requested answers to questions for the record as a follow up to a March 13, 2007 hearing held on the proposed pilot project. That letter included questions on four specific issue areas related to the pilot program and requested records and documentation of the Department's work related to the pilot program. In subsequent conversations with your staff, Committee staff clarified that the Committee was requesting only records related specifically to the development of the pilot program, and not all work done to prepare for opening the border since the passage of the North American Free Trade Agreement (NAFTA).

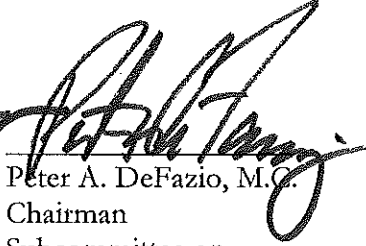

In a letter dated May 18, 2007, Under Secretary Shane responded to this request with a five-page letter. This letter was accompanied by two documents: the *Federal Register* notice cited above, which is publicly available, and a Memorandum of Consultations between the U.S. and Mexico, signed on April 27, 2007.

This response is wholly inadequate. We therefore renew our request and ask that the Department transmit all original records and documents, including records of internal discussions, memoranda, and electronic communications to the Committee by June 4, 2007, related to the following issues.

1. All DOT and FMSCA records and documents related to the Department's activities to consider, develop, or evaluate a cross-border pilot program, demonstration project, or other initiative to allow Mexico-domiciled motor carriers to operate beyond the U.S. municipalities or commercial zones along the U.S.-Mexico border.
2. All DOT and FMSCA records and documents that account the actions taken by the Department of Transportation since 2002 to comply with every provision outlined in Section 350 (a), (b), and (c) of the FY 2002 Department of Transportation and Related Agencies Appropriations Act (Public Law 107-87). Please also supply the Subcommittee with all DOT and FMCSA records and documents that evaluate how this specific pilot program or other initiative fulfills each specific requirement of Section 350.
3. Any internal legal analyses or other documentation evaluating whether the proposed pilot program is required to meet the specific provisions outlined in Section 4007 of the Transportation Equity Act for the 21st Century (TEA 21). Please provide to the Subcommittee all DOT and FMCSA records related to analysis of whether the pilot program contains regulatory exemptions or alternatives, or evaluates innovative approaches, to motor carrier, commercial motor vehicle, or commercial driver safety.
4. All records of proposals drafted by DOT to implement NAFTA access provisions by initially allowing a limited number of motor carriers on both sides of the U.S.-Mexico border to participate in a pilot program, and all records regarding the preparation of the Department for meetings with the Mexican government to move forward with such a program since 2002.

Thank you in advance for your cooperation.

Sincerely,



James L. Oberstar, M.C.
Chairman

Peter A. DeFazio, M.C.
Chairman
Subcommittee on
Highways and Transit