



Owner-Operator Independent Drivers Association

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The Honorable Ray LaHood
Secretary, U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Mr. Secretary:

As a representative of the interests of our nation's small business trucking professionals and professional truck drivers, I continue to be astounded by your Department's willingness to defy existing laws and regulations in order to forge ahead with the so-called pilot program that will allow Mexico-domiciled motor carriers to operate throughout the United States.

Department records show that the Federal Motor Carrier Safety Administration (FMCSA) began accepting and reviewing applications from Mexico-domiciled motor carriers to participate in the program as early as May of this year. The FMCSA's application processing activities then increased significantly in early July. Last week the Grupo Behr de Baja California's pending application appeared in the FMCSA Register and this week a notice was published in the Federal Register that the carrier had passed a Pre-Authority Safety Audit (PASA) on August 26. Yesterday another Mexico-domiciled carrier's pending application (Transportes Olympic de Mexico) appeared in the FMCSA Register and today a notice conveying that it had passed a PASA on August 25 was published in the Federal Register.

Aren't you getting the cart before the horse? How can the FMCSA utilize taxpayer resources to review and process those applications or initiate the so-called pilot program in any way before complying with the terms and conditions stipulated in Section 350 of Public Law 107-87 and Section 6901 of Public Law 110-28 as well as Section 135 of Public Law 111-117?

Section 350 of Public Law 107-87 states:

“SEC. 350. SAFETY OF CROSS-BORDER TRUCKING BETWEEN UNITED STATES AND MEXICO. (a) No funds limited or appropriated in this Act may be obligated or expended for the review or processing of an application by a Mexican motor carrier for authority to operate beyond United States municipalities and commercial zones on the United States-Mexico border until the Federal Motor Carrier Safety Administration –“ *(followed by several conditions)*

Section 6901 of Public Law 110–28 clearly states:

- “(b) Prior to the initiation of the pilot program described in subsection (a) in any fiscal year--
- (1) the Inspector General of the Department of Transportation shall transmit to Congress and the Secretary of Transportation a report verifying compliance with each of the requirements of subsection (a) of section 350 of Public Law 107-87, including whether the Secretary of Transportation has established sufficient mechanisms to apply Federal motor carrier safety laws and regulations to motor carriers domiciled in Mexico that are granted authority to operate beyond the United States municipalities and commercial zones on the United States-Mexico border and to ensure compliance with such laws and regulations; and
 - (2) the Secretary of Transportation shall--
 - (A) take such action as may be necessary to address any issues raised in the report of the Inspector General under subsection (b)(1) and submit a report to Congress detailing such actions; and”

As you know, the Inspector General’s report referred to in Section 6901 was released to the public last week. Among other issues raised in the report, the Inspector General stated:

“FMCSA has met most of the 34 Section 350(a) requirements that it must meet before processing applications from pilot program participants. However, the agency has not met those requirements related to conducting safety reviews onsite in Mexico. Specifically, FMCSA has not finalized its plans for nor identified the specific process it will use to comply with five requirements to conduct 50 percent of PASAs and compliance reviews in Mexico, and its policy on conducting PASAs for the new pilot program does not address where the reviews will be conducted.”

To my knowledge, FMCSA has not supplied Congress with the follow-up report as is required by Section 6901, yet the agency has gone forward with conducting Pre-Authority Safety Audits as it processes authority applications for Mexico-domiciled carriers.

It is also important to note that the Inspector General raised concerns about the lack of training provided to inspection and enforcement personnel at and beyond the border:

“FMCSA has not provided training to enforcement personnel we met with in May 2011. According to FMCSA's April 2011 Federal Register notice, it was providing ongoing training to Federal and State auditors, inspectors, and investigators on pilot program provision and procedures, including cabotage. During our May 2011 site visits, FMCSA, state, and CBP personnel informed us they had not received training or guidance on conducting PASAs or processing pilot program participants at the border or within the United States. FMCSA would need to provide training on program requirements to Federal and state enforcement personnel before program initiation. Federal and state border officials informed us that, without timely guidance and training, they may not be

able to consistently and properly implement the pilot program. . . However, additional actions are needed to ensure that drivers and trucks inspected at the border and within the United States comply with the motor carrier safety regulations and other Federal requirements. Without strong controls and processes to monitor the safety performance of Mexico-domiciled motor carriers with long-haul operating authority, FMCSA cannot ensure that the current level of safety on the Nation's highways will be maintained.

As you know, sufficient enforcement and monitoring activities by Federal and State personnel is also stipulated in Section 6901 and is fundamental to the program FMCSA has initiated.

As the Secretary of Transportation you have repeatedly conveyed an expectation that truckers in the United States strictly adhere to the laws and regulations of our nation. It is disingenuous for your Department to not abide by those same expectations and to disregard laws that Congress has put in place to ensure that Mexico-domiciled trucking companies comply with the same standards that already apply to US-based companies.

I implore you to stop bending over backwards to accommodate Mexico-domiciled companies and placate Mexico's government. It is high time that your Department start prioritizing the safety and well being of US-based trucking companies, truck drivers and citizens over the economic interests of another country.

Respectfully,

A handwritten signature in black ink, appearing to read 'James Johnston', written in a cursive style.

James Johnston
President