

August 13, 2004

Norman Y. Mineta  
Secretary of Transportation  
U.S. Department of Transportation  
400 Seventh Street, S.W.  
Washington, D.C. 20590

Dear Secretary Mineta:

In testimony before the Senate Commerce, Science and Transportation Committee on July 18, 2001, you stated that "... every Mexican firm, vehicle and driver that seeks authority to operate in the U.S. – at the border or beyond – must meet the identical safety and operating standards that apply to U.S. and Canadian carriers." As representatives of highway safety and consumer organizations with a longstanding interest in the safety of commercial vehicles on our nation's highways, we welcome your commitment to safety and the assurance that all motor carriers, both foreign and domestic, will be governed by the same safeguards.

To achieve that result, Congress enacted section 350 of the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 2002, P.L.107-87 (Dec. 18, 2001). That law imposed a number of requirements to ensure that customs and motor carrier inspectors at the border are able to enforce the same safety and operating standards for Mexico-domiciled carriers, vehicles, and drivers that must be met by U.S. motor carriers.

Now, three years later, we are concerned that your promise of assuring that identical safety and operating standards apply to all motor carriers is not being fulfilled. The pending report from the Office of the Inspector General (OIG), U.S. Department of Transportation (DOT), on the status of the Federal Motor Carrier Safety Administration's (FMCSA) compliance with the requirements of Section 350, will address a number of important safety and border infrastructure issues. There remain, however, significant baseline differences between U.S. and Mexican law, regulation, and procedure that govern motor carriers. These differences, detailed below, include changes in U.S. laws and regulations that have increased safety requirements for U.S. motor carriers in the past three years. It does not appear that these differences in regulations and recent changes in U.S. law have been taken into account in DOT's preparations to open the U.S. interstate highway system to Mexico-domiciled commercial motor carriers.

### **The Requirements of the U.S. Commercial Driver License and the Mexican *Licencia Federal de Conductor* Are Clearly Not Equivalent**

The U.S. and Mexican governments agreed, in a 1991 Memorandum of Understanding (MOU), that the U.S. commercial driver license (CDL) and the *Mexican Licencia Federal de Conductor* (LFC) were to be treated as "equivalent." Regardless of whether the two licenses imposed equivalent requirements then, since the MOU was signed thirteen years ago, a number of additional requirements have been implemented by the FMCSA for U.S. CDLs, as mandated by the Transportation Equity Act for the 21<sup>st</sup> Century, the USA Patriot Act, and the Motor Carrier Safety Improvement Act of 1999. The

requirements include mandatory background checks for criminal convictions and the application of passenger vehicle license suspensions and revocations as disqualifying offenses for a driver's CDL.

These and other recent U.S. requirements have not, to our knowledge, been adopted as requirements for Mexico's LFC. U.S. DOT should review the current requirements governing the U.S. CDL in order to identify where the Mexican LFC departs from the current U.S. CDL requirements. In addition, the MOU signed by Mexico and the U.S. that declared the equivalence of the two commercial licenses should be reviewed on its merits, in light of changes in U.S. law and regulation adopted since the MOU was signed, to determine whether or not these changes demonstrate that the LFC in fact is equivalent to the U.S. CDL. We request that you re-evaluate the 1991 equivalence determination prior to opening the border.

### **Compliance with U.S. Alcohol and Drug Testing Requirements Cannot Be Ensured Under the Current System**

Under Federal Motor Carrier Safety Regulation (FMCSR) Part 382, U.S. motor carrier operators are subject to pre-employment, random, reasonable suspicion, post-crash, return-to-duty, and follow-up drug and alcohol testing in accordance with the requirements of Title 49, Part 40. Part 40 details strict procedures for sample collection and testing, and sets stringent requirements for collection and testing facilities. Among the many requirements listed under Part 40 is certification by the Department of Human Services (HHS) of U.S. labs or, for Mexican and Canadian labs, written approval from HHS of having met HHS lab certification standards.

Currently, Mexican commercial drivers operating in the U.S. must adhere to U.S. requirements, including compliance with driver alcohol and drug testing rules. While some Mexican drivers that currently conduct short-haul drayage operations across the border are using U.S. alcohol and drug testing facilities, nothing prevents Mexican operators from obtaining certifications of compliance with U.S. drug and alcohol testing requirements from Mexican facilities. When long-haul commerce by truck from Mexico begins, some Mexican motor carriers, especially those that are not located near the U.S.-Mexico border, likely will need to use Mexican drug and alcohol testing facilities to obtain certificates of compliance with the U.S. testing requirements.

U.S. DOT should investigate and determine whether there are reliable, government-accredited laboratories with adequate drug and alcohol testing facilities in Mexico that can accurately and competently collect and process samples to demonstrate compliance with U.S. commercial driver drug and alcohol testing requirements. That investigation should include an evaluation of the quality of the drug and alcohol testing programs in Mexico and determine whether certifications produced by these programs and facilities are genuinely equivalent to U.S. requirements and facilities, including certification by HHS.

### **Attention to the Security and Safety of Hazardous Materials Motor Carrier Transportation and Inspection Is Needed**

In light of September 11, 2001, new security requirements regarding the transport of hazardous cargo have been enacted. Recently, the FMCSA issued a final rule requiring a new, special safety permit for certain types of hazardous materials (hazmat) pursuant to 49 U.S.C. § 5109. This new

regulation imposes stringent requirements for obtaining a permit to transport certain types of hazmat including a “satisfactory” safety rating under the U.S. compliance review rating scheme. It also requires certain communications between driver and carrier at the beginning and end of a shipment, as well as other requirements concerning routing plans. In addition, the Research and Special Programs Administration (RSPA) issued a regulation several months ago requiring each motor carrier of hazmat to create and implement a security plan to ensure that unauthorized personnel are prohibited from handling, transporting, or gaining access to placarded hazmat.

There has been no information regarding how Mexico-domiciled motor carriers intend to meet these new requirements or how the FMCSA and RSPA intend to confirm that Mexican motor carriers seeking entry into the U.S. will demonstrate compliance with these mandatory obligations. Just recently, the Coast Guard implemented new maritime security requirements for entering U.S. ports and turned away vessels that were not in compliance. The U.S. DOT should determine how Mexican motor carriers will comply with the safety and security requirements for transporting hazmat by commercial vehicle into the U.S., and whether state and federal authorities can ensure that these additional hazmat transportation requirements are being met by both drayage and long-haul Mexico-domiciled motor carriers.

It is also not clear whether Mexico-domiciled motor carriers are in fact currently meeting baseline requirements for motor vehicle transportation of hazmat that preceded these additional, new requirements. According to data obtained from the Texas Department of Public Safety, about *one-third* of Mexico-domiciled commercial vehicles inspected by Texas authorities for hazmat safety compliance in 2002 and 2003 were placed out-of-service. We expect the U.S. DOT to determine the current hazmat practices of Mexican motor carriers and the extent to which they adhere to U.S. law and regulation. Any carriers and vehicles not in compliance should be refused entry just as the Coast Guard invoked for safety and security in declining entry into U.S. ports for non-compliant ships.

### **Deficiencies in Motor Carrier and Driver Databases Must be Addressed**

U.S. domestic motor carrier data on crashes, violations, inspections, and compliance review results are compiled as a part of the Motor Carrier Management Information System (MCMIS), a U.S. motor carrier safety database. However, there were substantial questions raised by Congress and others in 2001 about the accuracy and reliability of Mexico-domiciled government data entries on the status of Mexican driver’s licenses and carrier operating authority in Mexico. These and related issues about the accessibility and reliability of motor carrier and driver data collected and maintained outside the U.S. must be clarified and confirmed by U.S. DOT. It is not clear whether this issue will be fully addressed in the forthcoming OIG report. If not, U.S. DOT must address how to ensure that data needed by U.S. enforcement and inspection authorities concerning the history, licensure, and operating authority of specific Mexico-domiciled motor carriers, commercial drivers, and specific vehicles are accurate when supplied from non-U.S. databases and that the information in Mexican government databases is quickly and easily retrievable by U.S. border officials.

### **Steps to Certify Vehicles as in Compliance with U.S. Motor Vehicle Safety Standards Missing**

Federal law prohibits anyone from importing a vehicle into the U.S. from any country, including a vehicle entering for commercial purposes, that has not been certified as having been built in

compliance with U.S. motor vehicle safety standards in effect at the time of construction. The law requires certification to ensure that vehicles using the roads and highways in the U.S. meet relevant standards. Until recent years, commercial vehicles constructed in Mexico were not built to comply with U.S. safety standards and have not been certified as in compliance with U.S. safety standards in effect on the date of manufacture. Without a manufacturer's label listing the date of manufacturer and documenting certification of compliance to U.S. safety standards, border inspectors are unable to determine which Mexico-domiciled commercial vehicles comply with the law. The DOT must finish and issue new rules to clarify the penalties for a vehicle lacking the certification of compliance required under U.S. law.

U.S. DOT must squarely address the issue of certification of compliance and, in particular, whether the prohibition against importing vehicles that are not certified and labeled as meeting U.S. standards is currently being enforced by U.S. border inspectors. U.S. DOT, in addition to other executive departments, bears responsibility for the enforcement of federal law. For this reason, DOT should assess whether certification enforcement is part of the training for border inspectors and determine what percentage of Mexico-domiciled vehicles arriving at the U.S. border carry a manufacturer label or other accurate documentation of certification of compliance with U.S. safety standards as required by U.S. law.

### **Procedures for Verifying Insurance and Penalties Are Inadequate**

Section 350(B)(iv) of the DOT Appropriations bill requires that compliance reviews include a verification of the carrier's proof of insurance. FMCSA requires bonds to be filed by the insurer for carrier company applicants in the application for operating authority, *see* 49 CFR 365.507(E)(1). However, there is currently no system in place for inspectors at the border to verify whether the paper "proof of insurance" carried by the driver of a Mexico-domiciled truck is in fact the same insurance paper on file with the carrier's application at FMCSA. Neither can border inspectors ascertain from the "proof of insurance" presented at the border whether the coverage indicated is adequate or has lapsed.

In contrast, within the U.S., individuals and states or localities harmed by a truck crash or hazardous materials incident caused by a U.S.-domiciled carrier could pursue legal action against the carrier company in any instance in which there was inadequate or no insurance coverage of the driver or truck. As to Mexico-domiciled carriers, injured parties would most likely have to seek compensation in Mexican courts, where U.S. litigants have often met with little or no success. An online database to check the paperwork of drivers against the carriers' filed application paperwork regarding insurance is a simple fix, but remains undone.

In addition, FMCSA should assure that inadequate insurance, which is, according to previous reports by the Inspector General, by far the most common violation found in border inspections of Mexico-domiciled carriers, is grounds for an out-of-service order, and that a pattern of this violation results in stiff penalties for the carrier. Currently, the sole penalty for inadequate insurance is issuance of a "deficiency letter." The absence of meaningful checks to assure that carriers are carrying valid insurance also means that the public is deprived of the valuable safety screening that the insurance industry would undertake prior to issuing insurance, meaning that many of the most dangerous vehicles may remain on the road despite the requirement for coverage.

We appreciate your careful attention to these issues to assure the American public that safety is in fact the highest priority of the U.S. government and to fulfill your commitment that all motor carriers will meet the identical safety and operating standards that apply to U.S. carriers. We look forward to your response concerning how the department intends to address each of these issues.

Sincerely,

Joan Claybrook  
President, Public Citizen

Andrew McGuire  
Executive Director, Trauma Foundation

Clarence Ditlow  
Executive Director, Center for Auto Safety

Daphne Izer  
Parents Against Tired Truckers

Jack Gillis  
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