

**STATEMENT OF
THE HONORABLE MARY E. PETERS,
SECRETARY OF TRANSPORTATION**

**BEFORE THE SENATE COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
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INTRODUCTION

Chairman Lautenberg and Members of the Committee, thank you for inviting me today to discuss the Department of Transportation's (DOT's) demonstration project to implement the long-delayed trucking provisions of the North American Free Trade Agreement (NAFTA). I am pleased to describe to you what the Department has done to implement Section 350 of the Fiscal Year 2002 Department of Transportation and Related Agencies Appropriations Act (P.L. 107-87; 115 Stat. 833, 864-868); Section 6901 of the U.S. Troop Readiness, Veteran's Care, Katrina Recovery and Iraq Accountability Appropriations Act of 2007 (P.L. 110-28; 121 Stat. 112, 183-185); and the additional steps we have taken to ensure that we safeguard the security of our transportation network even as we strengthen trade with a close neighbor and important partner.

Fifteen years ago, the United States pledged to allow the free flow of commerce across the North American continent. Three U.S. Presidents and Congress have considered and ultimately supported NAFTA's trucking provisions and the Supreme Court has rejected unanimously a challenge to the Department's implementation of those provisions, allowing us to make that pledge a reality. Unfortunately, the delay in fully implementing NAFTA's long-haul trucking provisions has impeded the efficient movement of goods to the markets on both sides of the southern border to the detriment of the Nation's economy. This demonstration project started a process to remove this impediment, creating new opportunities, new hope, and new jobs north and south of the border.

BACKGROUND

In 1992, President George H. W. Bush signed NAFTA. It was then enacted by Congress and signed into law by President William J. Clinton in 1993, and it became effective on January 1, 1994. Now, 14 years after we began implementing the agreement, its economic benefits are clear. U.S. merchandise exports to NAFTA partners have grown more rapidly than our exports to the rest of the world. Real Gross National Product Growth for NAFTA partners for the period 1993 to 2006 has been 50% for the United States, 54% for Canada, and 46% for Mexico.

Americans are reaping the benefits of this success. Each day, nearly \$2.5 billion in trade flows among the United States, Mexico, and Canada, offering consumers greater choices and strengthening trade and investment ties with two democratic nations and longtime allies. U.S. employment has increased substantially as well, rising from 112.2 million jobs in December 1993 to 137.2 million in December 2006, an increase of 25 million

jobs, or 22 percent. The jobs these exports support are particularly valuable to American workers, as they pay between 13 and 18 percent more than the U.S. national average. All of this helps to explain why, between 1993 and 2006, the nation's real Gross Domestic Product has nearly doubled. This record demonstrates that we must move forward to fully implement NAFTA.

One of the agreement's last remaining provisions to be implemented fully is the cross-border trucking provision. Originally planned to commence in December 1995 with transportation between Mexico and the four Border States (Arizona, California, New Mexico, and Texas), it was to have been implemented fully by January 1, 2000. In December 1995, Transportation Secretary Peña announced an indefinite delay in opening the border to long-haul Mexican commercial trucks to address legitimate concerns about the safety of Mexican trucks that would be traveling on our highways.

Twelve years later these concerns have been addressed. With safety and security programs now in place, the time has come to move forward on a long-standing commitment with Mexico and Canada by proceeding with the trucking provisions of NAFTA.

DEMONSTRATION PROJECT

Over the last thirteen years, there has been an ongoing conversation about safety, security, environmental, and economic issues involved with allowing trucks from Mexico to operate in the U.S. beyond the border zones. This conversation has occurred between DOT and Mexico's Secretariat of Communications and Transport; it has occurred between the Presidents of our nations; it has occurred in the U.S. House and U.S. Senate chambers; it has occurred in the media; and it has occurred in front of a NAFTA dispute settlement panel, a U.S. Court of Appeals, and even the United States Supreme Court. These conversations made clear that there were a number of important and difficult issues that had to be addressed – and have been addressed – before moving forward with a graduated border opening.

For that reason, the Administration has implemented a one-year demonstration project to authorize up to 100 Mexican trucking companies to perform long-haul operations within the U.S. These companies are limited to transporting international freight and are not authorized to make domestic deliveries between U.S. cities. Likewise, under this program, Mexico will grant authority to an equivalent number of U.S. companies to make deliveries between the U.S. and Mexico. This marks the first time that American trucks have been allowed to make deliveries in Mexico in accordance with NAFTA.

Three entities are providing oversight for the demonstration project. The first, a binational group with representatives from both the U.S. and Mexico, provides continuous monitoring of the project and identifies and resolves any implementation issues as they arise. The second, an independent evaluation panel appointed by the Secretary and composed of experts knowledgeable of the issue, has been tasked with measuring and evaluating the demonstration project. Finally, we welcome the ongoing

involvement of the Department's Inspector General and any ideas he may have to improve the program's effectiveness. We believe that this combination of close tracking and oversight provides both the means for addressing implementation issues in a timely fashion and also an independent means for an objective evaluation of the project.

By granting authority to a limited number of Mexican carriers and monitoring them closely throughout the duration of the project, we are able to monitor and evaluate the adequacy of the safety systems we have developed to address the concerns raised since 1995.

There are no exceptions to safety regulations for trucks or drivers from Mexico. They must meet all U.S. safety requirements when they cross the border now, and before they will be allowed to drive beyond the border zones. All drivers must have a valid commercial driver's license, proof of medical fitness, and documentation of compliance with hours-of-services rules. They must be able to understand and respond in English to questions and directions from U.S. inspectors. They also must undergo drug and alcohol testing. In addition, all trucks must be insured by a U.S. licensed insurance company and meet U.S. safety standards.

Let me put the magnitude of this demonstration project in context. Today, more than 700,000 interstate and approximately 400,000 intrastate companies are registered to operate in the U.S., with over 8 million large trucks registered here. Meanwhile, the 63 Mexican trucking companies that have passed the pre-authority safety audit at this time plan to operate only 304 trucks in the U.S. and employ 257 drivers. As it currently stands, 18 Mexican trucking companies have secured the U.S.-based insurance required by the program and are currently operating as part of the demonstration project. These companies are operating 62 vehicles. However, only seven percent of their deliveries in the U.S. have gone beyond the border commercial zones.

It also is important to note that the demonstration project will not involve hazardous materials transportation, bus transportation of passengers, or operation of longer combination vehicles by Mexican carriers.

SAFETY

Safety is at the heart of all we do at DOT and it has been foremost in our thoughts as we prepared to change the way trucks from Mexico operate in the U.S. Development of our safety programs has been guided by, but not limited to, the 22 requirements that Congress included in Section 350 of the 2002 Act. The Inspector General's September 6, 2007, report states that the Federal Motor Carrier Safety Administration (FMCSA) has addressed each of these requirements. I have attached a table of these requirements to the written testimony and the actions FMCSA has taken to satisfy them.

Just over a year ago, I traveled to Monterrey, Mexico, to visit a Mexican trucking company. There, I witnessed FMCSA personnel conducting a pre-authorization safety audit on the motor carrier as required by Section 350. Under the law, at least 50 percent

of such audits must take place at the carrier's place of business in Mexico. For this demonstration project, FMCSA has committed to and is conducting 100 percent of pre-authority safety audits in Mexico. These audits ensure that Mexican carriers wishing to operate in the U.S. beyond the border zones have systems in place to comply with all DOT regulations, including driver qualification, drug and alcohol testing, hours-of-service, vehicle maintenance, and insurance.

During the pre-authority safety audit, FMCSA inspectors also conduct vehicle inspections of the trucks a company wishes to use in the U.S. The Inspector General's September 6, 2007, report indicated the FMCSA was only inspecting "available" vehicles. FMCSA has changed this policy and is now inspecting all vehicles the carrier states it will operate in the U.S. when it conducts the pre-authority safety audit.

The inspection is a comprehensive 37-step process that involves checking the vehicle from front to back and top to bottom. At the conclusion of this inspection, if no defects are discovered, the vehicle is issued a 90-day Commercial Vehicle Safety Alliance (CVSA) safety decal. All trucks operating in the test program are required to display a current decal at all times while operating in the U.S., which means they will be inspected at least once every 90 days.

This safety audit is merely the beginning of FMCSA's oversight. All Mexican trucks operating beyond the border zones have a unique identifier, an "X" at the end of the DOT number marked on the vehicle. This is easily visible to FMCSA and State inspectors. When these trucks reach the border, they are subjected to additional vehicle inspections and license checks. Under Section 350, FMCSA is required to check the validity of licenses for at least 50 percent of the drivers entering the country. However, FMCSA is working to check 100 percent of drivers and vehicles, each time they enter the country to: 1) verify the vehicles have the proper safety decals; 2) verify the driver has a valid license; and 3) ensure the driver can speak English.

FMCSA uses a satellite-based Global Positioning System (GPS) to track and monitor the vehicles in the demonstration project. The system locates the vehicle every 30 minutes and records those locations for future reference. FMCSA is using this information to monitor when the Mexican vehicles are in the U.S. and measure how many miles they travel. In addition, FMCSA can use reports from the system to identify possible hours-of-service violations, verify driver records of duty status, and identify possible cabotage violations. FMCSA will follow up possible violations with targeted investigations or complete compliance reviews as needed.

Since 1995, Congress has appropriated and FMCSA has spent more than \$500 million to improve border inspection stations and hire more than 600 new State and Federal inspectors to enforce truck safety on the border. We have deployed 125 FMCSA inspectors and an additional 149 auditors and investigators along the southern border at all truck crossings. Our State partners in Arizona, California, New Mexico, and Texas have deployed an additional 349 inspectors. These safety professionals oversee the safety of Mexican trucks providing transportation in the existing border commercial

zones and have made noteworthy progress in establishing the safety foundation for this demonstration project. These inspectors conducted more than 210,000 driver and vehicle inspections of Mexico-domiciled carriers in the commercial zone during fiscal year 2006 and performed more than 240,000 automated, real-time, checks of Mexican drivers' licenses. Their efforts are paying off. Ten years ago, the out-of-service rate for Mexican trucks was 59 percent. Since the increased enforcement that resulted from hiring additional FMCSA and State staff, the rate has dropped to 21 percent last year, which is comparable to the out-of-service rate we typically observe when we select U.S. trucks for inspection.

I want to highlight that while these inspectors have been effective and are helping the Department satisfy its Congressional requirements, we are looking toward more comprehensive and effective screening methods for the future. FMCSA is working with the Department of Homeland Security's (DHS) Customs and Border Protection (CBP) to have motor carrier safety integrated into the International Trade Data System, or ITDS, which is part of the Automated Commercial Environment development effort. When this initiative becomes fully operational later this year, every Mexican trucking company will have its authority and insurance checked and every Mexican truck driver will have his or her license verified each time the driver crosses the border, whether the vehicle is operating within the commercial zone or involved in long-haul transportation. Since these computer checks occur prior to a truck's arrival at the southern border, if a problem is discovered, notice will be sent back to the company or broker entering the information so issues can be addressed before the truck even reaches border points of entry. If the truck arrives at the border, the CBP Officer will receive notice that there is an issue with the truck and direct it for further inspection by FMCSA or State inspectors.

While in the U.S., the performance of these Mexican carriers will be closely monitored. We have established, through rulemaking, a list of seven safety problems related to driver licensing, operating unsafe vehicles, drug and alcohol testing, and insurance, which would lead to action by FMCSA up to and including revocation of a carrier's provisional authority if not addressed promptly.

FMCSA has worked with State and local law enforcement officials so they can assist in ensuring Mexican trucks operate safely and within the limits of their authority. In 2002, FMCSA established regulations prohibiting all carriers from operating beyond the scope of their authority and requiring that vehicles operated by non-compliant carriers be placed out of service. Since that time, every State has adopted and begun enforcing these provisions. The CVSA has incorporated this violation into its Out-of-Service criteria, meaning that a Mexican truck discovered operating beyond the scope of its authority will not be allowed to continue. We have incorporated these new regulations into training given to all commercial vehicle inspectors.

FMCSA and the International Association of Chiefs of Police have developed a commercial motor vehicle awareness training program. We have trained more than 200 law enforcement officers to instruct other law enforcement officials on how to identify a Mexican motor carrier, how to verify the validity of a Mexican driver's commercial

license, how to determine whether the carrier is operating within its authority, and where to call if they need additional assistance with truck-specific issues. Through this program, we have developed and implemented a training program that provides State and local law enforcement officers in the U.S. detailed information on cabotage regulations and enforcement procedures.

In addition to the Federal safety requirements, the Mexican trucks operated in this demonstration project will be required to adhere to the same State requirements as U.S. trucks, including size and weight requirements and paying the applicable fuel taxes and registration fees. In preparation for this project, FMCSA has worked with the four Border States to develop the capability for these States to register Mexican trucks in the International Registration Plan and International Fuel Tax Agreement.

Despite the steps I have outlined above, some argue that the demonstration project is still unsafe. The current safety record of the participating trucks in the demonstration program is better than that of the U.S. trucking fleet. Our requirement that trucks be equipped with GPS monitoring devices – a provision that goes beyond what Congress has directed – allows us to monitor constantly and pinpoint the location and duration of every participating vehicle's trip.

While we have come a long way since the days when Mexico-domiciled trucks' out-of-service rate was 59 percent, some still maintain that, because Mexico does not have a regulatory scheme identical to that of the U.S., Mexican trucks will not operate safely in this country. Yet, this assertion is not made with respect to what takes place on our northern border. Canada, for instance, does not require that its commercial drivers be drug tested randomly. However, when these drivers operate in the U.S., they must participate in a random drug testing program. No one is suggesting that because Canada does not test drivers randomly we should prohibit Canadian trucking companies from operating in the U.S. However, that is what opponents of the demonstration program would have us do with Mexican drivers.

Some have suggested that we are not following the law of the land. They argue that because Congress told us last December not to establish a cross-border motor carrier demonstration program that we should have dismantled a previously-established program that is working significantly in favor of U.S. truckers. U.S. trucks have made more than twice as many trips into Mexico as Mexican carriers have made into the interior of the U. S. under this demonstration program.

The Administration has looked very closely at the 2008 DOT Appropriations Act, particularly section 136. By prohibiting the use of funds "to establish" a cross-border motor carrier demonstration program, section 136 does not prohibit spending to continue to implement the ongoing cross-border demonstration project, which was established in September 2007 – well before enactment of the current Appropriations Act. Consistent with the Appropriations Act prohibition, FMCSA will not establish any new cross-border demonstration programs involving Mexican motor carriers. In addition, we will continue

to ensure that previously enacted legislative mandates are followed, including sections 350 and 6901, as required by section 135 of the Consolidated Appropriations Act, 2008.

The appropriations bill passed by the House of Representatives last July [H.R. 3074, 110 Cong. §410 (2007)] would have barred spending “to establish or implement” a cross-border demonstration project. However, the enacted version of the bill is drafted more narrowly and prohibits only use of funds “to establish” such a project.

SECURITY AND ENVIRONMENT

While safety is the highest priority, the issues involved in this demonstration project are not limited to safety. For this reason, the Department has coordinated closely with other Executive Branch agencies, particularly with the Department of Homeland Security (DHS) on border security matters and with the Environmental Protection Agency (EPA) to address environmental issues. While these agencies can address better the details of their programs, let me share with you an overview of what is being done to address these areas.

The majority of vehicles Mexican trucking companies will use for long-haul operations have been manufactured to meet both U.S. and Mexican emission standards. In fact, most commercial motor vehicles now entering the U.S. from Mexico were manufactured in the U.S. or Canada, meaning that they were manufactured to U.S. emissions standards. As breakdowns are costly for both carriers and shippers, we expect that the fleet of trucks used for long-haul cross-border transportation will be newer and cleaner. We anticipate that Mexican companies will maintain or expand their use of equipment that is manufactured to meet U.S. standards. Additionally, Mexico also has upgraded its domestic vehicle emission requirements in the last three years and now has regulations similar to those currently in effect in the U. S. EPA is working with the Mexican government to encourage full adoption of new U.S. truck and fuel standards.

On a yearly basis, CBP processes about 4.5 million trucks through the U.S.-Mexico Border. It is estimated that the maximum of 100 carriers permitted to participate in this demonstration project will account for approximately 1,000 trucks, a very small percentage of the CBP workload. As I indicated earlier, currently, there are 18 Mexican carriers operating 62 trucks. Clearly, implementing this demonstration project will not change our border security or immigration security posture.

Current Processing

All commercial truck cross-border traffic must stop at a designated border crossing. As required by statute and regulation, each truck is processed at the border, using automated systems to assist in determining whether the cargo, truck, and driver are admissible and whether any of the elements pose a security, immigration, agriculture, or smuggling risk.

If the CBP Officer determines that further inspection is necessary, the driver, truck, and cargo are referred for a secondary inspection. In a secondary inspection, CBP officers have many inspection tools at their disposal, including access to commercial, criminal

and law enforcement databases, forensic document equipment, agricultural experts, and large-scale scanning systems.

If the CBP Officer performing primary or secondary inspections determines that the driver, truck, and cargo are admissible and do not pose a risk, then the driver is allowed to proceed into the United States. The Mexican carrier is then able to deliver the cargo to a location within the commercial border zone, which can range up to 25 miles from the border (or 75 miles from the border within Arizona). The cargo remains within the commercial zone until it can be picked up by a U.S. driver and truck.

Current CBP inspections are in addition to and separate from motor carrier inspections. The current CBP inspections and the current motor carrier inspections will continue under the demonstration project.

Demonstration Project

Under the demonstration project, processing of Mexican nationals and commercial trucks is in accordance with CBP guidelines. All cross-border commercial truck traffic is required to stop at a designated border crossing. Mexican drivers are required to present an entry document, and if traveling outside the 25-mile commercial zone (or 75-mile limit within the State of Arizona), the drivers are issued a Form I-94 pursuant to regulations, and follow CBP inspection procedures that include US VISIT (United States Visitor and Immigrant Status Indicator Technology) biometric vetting, and other security requirements.

CBP processing of drivers, cargo, and conveyances for security screening and trade enforcement remains consistent for truck carriers participating in this demonstration project. Participants continue to provide advanced cargo information as required under the Trade Act of 2002. Participants remain subject to immigration entry requirements for the driver and crew and to the import requirements of other government agencies in order to gain entry into U.S. commerce.

After the CBP check, all participating demonstration project carriers from Mexico proceed to FMCSA's inspection checkpoint – where every truck and every driver are checked every time they cross the border.

DOT and DHS continue to partner in this effort to ensure safety and security requirements are completely addressed and satisfied prior to a carrier being allowed to proceed to an interior location in the United States.

CONCLUSION

Trucks from Mexico have always been allowed to cross the U.S. border. Until 1982, they could travel anywhere in the United States. For the last 25 years they have been restricted to specific border areas in Arizona, California, New Mexico, and Texas. Every day, thousands of trucks from Mexico enter the United States. Every day, drivers from Mexico operate safely on roads in major U.S. cities like San Diego, El Paso, Laredo, and

Brownsville. And every day, Federal and State inspectors ensure trucks are safe to travel on our roads.

We have developed this limited program to demonstrate the effectiveness of the systems we have deployed to satisfy Section 350 of the 2002 Appropriations Act and Section 6901 of the 2007 U.S. Troop Readiness Appropriations Act and to ensure the safety of the U.S. traveling public.

Thank you for the opportunity to appear before you today. I look forward to working with this Committee and the transportation community to ensure a safe transportation system for the citizens of the United States and to strengthen our trade with Mexico.

All 22 Congressional Safety Mandates Have Been Met

The Department of Transportation has developed a plan to:

- ✓ Establish mandatory pre-authority safety audits
- ✓ Conduct at least 50 percent of the safety audits on-site in Mexico
- ✓ Issue permanent operating authority only to Mexican trucking companies who pass safety compliance review
- ✓ Conduct at least 50 percent of the compliance reviews on-site in Mexico - including any who did not receive an on-site pre-authority audit
- ✓ Check the validity of the driver's license every time a truck crosses the border
- ✓ Assign Mexican truck companies a distinct DOT number
- ✓ Inspect all trucks from Mexico that do not display a current CVSA decal
- ✓ Have state inspectors in the border states report any violations of safety regulations by trucks from Mexico to U.S. federal authorities
- ✓ Equip all U.S.-Mexico commercial border crossings with weight scales - including weigh-in-motion (WIM) systems at 5 of the 10 busiest crossings
- ✓ Study the need for weigh-in-motion (WIM) systems at all other border crossings
- ✓ Collect proof of insurance by a U.S. certified insurance carrier from Mexican companies who want to operate beyond the border zone
- ✓ Limit trucks from Mexico operating beyond the border zone to cross the border only where a certified federal or state inspector is on duty
- ✓ Limit trucks from Mexico operating beyond the border zone to cross the border only where there is capacity to conduct inspections and park out of service vehicles
- ✓ Ensure compliance of all U.S. safety regulations by Mexican operators who wish to go beyond border zones
- ✓ Improve training and certification for border inspectors and auditors
- ✓ Study needed staffing along the border
- ✓ Prohibit Mexican trucking companies from leasing vehicles from other companies when they are suspended, restricted, or limited from their right to operate in the United States
- ✓ Forbid foreign motor carriers from operating in the United States if they have been found to have operated illegally in the United States
- ✓ Work with all state inspectors to take enforcement action or notify U.S. DOT authorities when they discover safety violations
- ✓ Apply the same U.S. hazardous materials driver requirements to drivers from Mexico hauling hazardous materials
- ✓ Provide \$54 million in Border Infrastructure Grants for border improvements and construction
- ✓ Conduct a comprehensive Inspector General's review – to be certified by the Secretary - that determines if border operations meet requirements