

PREPARED STATEMENT OF
PHILIP W. HASELTINE
DEPUTY ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS
U.S. DEPARTMENT OF TRANSPORTATION
BEFORE THE
HOUSE PUBLIC WORKS AND TRANSPORTATION COMMITTEE
SURFACE TRANSPORTATION SUBCOMMITTEE

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Mr. Chairman and members of the Committee, I am pleased to have the opportunity to meet with you today to provide the Department of Transportation's views on the implementation and effectiveness of Section 226 of the Motor Carrier Safety Act of 1984.

As you know, in response to limits on U.S. motor carriers' access to Canada and Mexico, the Bus Regulatory Reform Act of 1982 imposed a moratorium on grants of new ICC operating authority for Mexican and Canadian motor carriers. The moratorium was lifted for Canadian carriers shortly after it was imposed, as a result of a mutual understanding between our two governments that emphasized the importance of our respective carriers having a fair opportunity to compete. The moratorium on grants to Mexican carriers, however, has remained in place and has been extended twice by President Reagan, most recently in September 1986 for an additional two years.

Further restrictions were imposed on Mexican truckers' access to the United States by Section 226 of the Motor Carrier Safety

Act of 1984. Section 226 was intended to accomplish several objectives:

1. Through the issuance of certificates of registration, to make certain that Mexican trucks operating in the United States are safe, adequately insured, and current in U.S. tax payments;

2. To aid in enforcement against unlawful Mexican trucking operations in the United States by limiting virtually all such operations to border commercial zones;

3. To achieve a measure of equity between the access afforded U.S. truckers to the Mexican market versus that which is afforded to Mexican truckers in the U.S. market, thereby redressing a fundamental imbalance in competitive opportunities that had existed and, it was hoped, inducing the Mexicans to negotiate seriously this issue; and

4. To minimize the disruption of cross-border trucking for U.S. companies with business dealings in Mexico.

These objectives have been achieved only in part. No new ICC authority has been granted to Mexican operators, and the great majority of Mexican trucking operations has been confined to the ICC commercial zones adjacent to the border (those few Mexican truckers that already had ICC authority to operate outside of border commercial zones may continue to use it).

In other respects, however, Section 226 has had unanticipated effects that did not contribute to its objectives.

0 The law was intended to impose no new safety or financial responsibility requirements, yet the rigidity of the

statutory language has had that result. The main problem is that -- in requiring the ICC to issue certificates on an annual basis -- the law in turn requires Mexican truckers to have an insurance policy good for a full year. This precludes Mexican truckers from availing themselves of an option the Federal Highway Administration's Office of Motor Carriers (OMC) has given them in meeting the Department's financial responsibility requirements -- buying insurance to cover only the length of time they are in the United States. A trucker who comes from the Mexican interior only a few times a year -- for example to deliver produce in Nogales, Arizona -- and who formerly could buy trip insurance at a cost of roughly \$20 per day, now faces a prohibitive cost of as much as \$10,000 per year.

We suspect that the effect of this arrangement has been to establish the larger Mexican trucking companies and customs brokers as "clearing houses" for cross-border operations, in connection with which these companies lease vehicles and drivers from truckers who only occasionally cross into the United States. It is not clear how widespread this practice is or what its ultimate effect is on the quality and price of cross-border trucking service.

0 U.S. Customs officials verify that some vehicles have the certificate of registration, but it is not an easy matter for them to determine exactly which vehicles must meet this requirement, since the certificate must be obtained only by

private carriers and carriers of exempt commodities.

Determining at a busy border crossing what category a particular carrier falls into is not a simple matter.

0 The issuance of a certificate does not in itself ensure compliance with Federal safety requirements or observance of the boundaries of the safety exemption zones. No simple piece of paper can assure vehicle safety fitness at the border; only on-the-ground checks can do that, and safety enforcement today largely depends on State willingness, which varies along the border, to carry out this responsibility.

Although the constraints imposed on Mexican truckers have introduced a measure of equity in the cross-border market, they have provided little or no improvement in the willingness of our Mexican neighbors to negotiate an open market solution. The Mexican Government has remained intransigent despite repeated U.S. attempts to begin discussion of this issue. The last formal discussions on this matter took place during a 1984 meeting of the Transportation Working Group of the U.S.-Mexico Joint Commission on Commerce and Trade. Representatives of the Mexican Government made it clear then that Mexico would accept the U.S. closing the border entirely in retaliation, since the Mexican Constitution prohibits operation of trucks by non-Mexican citizens, including even the transit of foreign commercial motor vehicles through Mexican territory. They expressed no interest in making changes to the Constitution to address U.S. concerns. More recently, the State Department, under Section 717 of the International Security

and Development Cooperation Act of 1985, sought to open talks with Mexico on relaxing Mexican restrictions on commercial traffic from Central America bound for the United States. The Mexican Government again declined our request for negotiations.

While the Ruiz Cortines Decree of 1955 was intended to permit limited access to Mexican border zones by U.S. operators -- and in that respect is similar to the current U.S. restrictions on Mexican carriers in the United States -- uniform access for U.S. carriers is not available. The Decree has never been universally implemented; hence, access to the Mexican border zone for U.S. carriers varies from city to city along the border.

We believe that the objectives of the existing statutes are still completely valid. In particular, it continues to be important to indicate to the Mexican Government our dissatisfaction with the status quo. However, we believe that those goals can be achieved in ways that are less administratively burdensome. In particular, it seems evident that the certificate of registration has created some confusion and represents an overlap with federal requirements that are separately enforceable.

Let us examine the three requirements with which a trucker must certify he or she has complied.

First, insurance. The Mexican trucker must certify that he or she has complied with relevant insurance laws. But OMC's insurance form, the MCS-90, is required in any case to be displayed separately in all trucks except private carriers. The certificate of registration does not create federal insurance

coverage for private carriers, since they do not have to have it under federal law and thus do not have to have it for the certificate.

Second, road taxes. Gas taxes are paid when gas is purchased. The applicable lump-sum tax is the heavy vehicle use tax. Mexican truckers rarely trigger the 5000-mile travel distance that requires payment of the tax, so there are seldom taxes whose payment must be certified.

Finally, safety fitness. There is no substitute for on-the-road enforcement, and that is most effectively accomplished by the states. California has demonstrated that state enforcement of state and federal laws in regard to Mexican truckers can work. A certificate of registration cannot do that.

One of the Department's major concerns about cross-border trucking is safety of vehicles and operations. Our view, stated simply, is that all Mexican truckers, when operating in the United States, should comply with all applicable U.S. laws. Thus, Mexican truckers comply with all FHWA interstate safety standards when the trucker does not operate wholly within the intra-city safety exemption zones. The Department is currently considering the rescission of the intra-city exemption. Under a 1985 ANPRM that would do so, the FHWA requested comments and is now considering further rulemaking. Two bills have also been introduced in the Congress to abolish the safety exemption zones.

The Department believes that enforcement should become almost exclusively a state responsibility. We are also progressing in

our efforts to persuade states to participate in the Motor Carrier Safety Assistance Program (MCSAP). Funding for the MCSAP was increased by almost 200 percent to a level of \$50 million starting in FY 1987. The funding level will pay for an additional two million roadside inspections. Fifty states and territories currently participate. Texas has signed a letter of intent for implementation into this program and is awaiting adoption of necessary State legislation. Under this program, Texas would agree contractually to enforce Federal safety standards within its borders. All other border states, except New Mexico, have already joined.

A legislative change would further our goals. To that end, we have proposed in the ICC Sunset Bill, which is part of the Administration's omnibus trade bill sent to the Congress last month, to replace the narrow, restricted steps that we are required to take in response to unreasonable and discriminatory restrictive practices by foreign governments with a more flexible authority vested in the President and delegated to the Secretary of Transportation. Restrictions would be imposed through rulemaking. This authority would enable the Government to tailor its response on a case-by-case basis, and to streamline administrative procedures as appropriate. It would allow us to respond without further legislation if the ICC Sunset Bill were to pass and the various regulatory categories of trucks (for-hire, private, exempt, et cetera) were to be abolished. If this legislative proposal becomes law, it is our intention to maintain

the commercial zone limitations on Mexican truckers. We would also be able to deal with the insurance problem. Further fine-tuning of any restrictions could be developed during the rulemaking process.

This concludes my statement, Mr. Chairman. I will be happy to answer any questions you or the members of the committee may have.