

Safety Problems Still Exist – Border Pilot Program Should Be Stopped

U.S. DOT Letter to Congress* Misrepresents DOT Inspector General (OIG) Report* and DOT Compliance with Section 6901 of Pub. L. 110-28 (2007)

FICTION: The DOT letter asserts that legal requirements enacted by Congress have been completed.

FACT: DOT has **NOT** met all legal requirements for pilot programs.

- ▶ Safety organizations have shown repeatedly that the Federal Motor Carrier Safety Administration (FMCSA), the DOT agency responsible for motor carrier safety, has evaded compliance with several key pilot program requirements of 49 U.S.C. § 31315(c) mandated by Section 6901.
- ▶ FMCSA continues to ignore and evade federal law mandating compliance with additional legal requirements governing the conduct of pilot programs such as adopting a scientific plan for collecting project data and performing scientifically credible safety analysis.

FICTION: The DOT letter asserts that the states are ready for the pilot program.

FACT: The OIG's Report documents that many states are **NOT** ready.

- ▶ Five States (NE, NV, MT, RI, UT) and perhaps more (MD did not respond to OIG) are not ready to enforce safety rules for the pilot program.
- ▶ Six states (FL, GA, LA, NM, WA and DC) cannot enforce cabotage rules concerning point-to-point deliveries.
- ▶ Half the States do not have procedures in place to oversee and enforce requirements in several areas of safety and security.
- ▶ Data deficiencies on Mexican truck driver convictions and violations are still not resolved.
- ▶ FMCSA has only “promised” to correct bus border crossing problems.
- ▶ FMCSA has not adequately ensured that the States understand project guidance, and more training is needed.

FICTION: The DOT letter states that FMCSA is ready for the pilot program.

FACT: The OIG Report states that FMCSA is **NOT** ready in many key areas.

- ▶ FMCSA inspectors do not have critically important safety information on vehicle accident reports, driver violations maintained by Mexican authorities, and whether the pilot program applicant actually has U.S. long-haul insurance.
- ▶ FMCSA has admitted that key databases about Mexican motor carriers, vehicles and drivers are still under development.
- ▶ There is still no adequate method to ensure that Mexican drivers comply with U.S. drug and alcohol testing laws and regulations for specimen collection, only a plan to “cooperate” with Mexican authorities.

*Both documents were issued on September 6, 2007

FICTION: The DOT letter claims to address all of the OIG Report concerns.

FACT: The OIG Report states that major issues of OIG concern were **NOT** resolved.

- ▶ FMCSA has no means of demonstrating the safety impact of the pilot project.
- ▶ FMCSA has not demonstrated that the project participants are a representative sample of Mexican motor carriers.

FICTION: The DOT letter states that FMCSA will check “every truck, every time.”

FACT: DOT is **NOT** ready to keep this promise.

- ▶ The OIG Report states that “FMCSA has not developed and implemented complete, coordinated plans for checking trucks and drivers participating in the demonstration project as they cross the border.”

FICTION: Site-specific plans for each border crossing have now been issued.

FACT: These plans were not prepared until after the OIG Report was completed so the OIG did **NOT** review or audit the site-specific border crossing plans.

- ▶ The “Plans” were just created in the last few weeks. One “plan” with Custom and Border Protection officials was forged a few days ago on September 4, 2007.
- ▶ The “Plans” lack essential details and are often only a single page.
- ▶ The “Plans” are often the result of one-time meetings with state and Custom and Border Protection officials.

FICTION: FMCSA claims that Mexican motor carriers and drivers are not being granted any exemptions from U.S. regulations.

FACT: In fact, safety organizations have demonstrated repeatedly that substantial differences continue to exist between U.S. and Mexican laws and regulations on commercial driver physical fitness and medical qualifications, commercial driver licensure, drug and alcohol testing, hours of service, truck certification of vehicle safety compliance, and enforcement of driver motor carrier laws and regulations.

- ▶ For example, FMCSA will not require Mexican truck drivers in the pilot program to take entry-level driver training that is required for all new commercial truck and bus drivers in the U.S. Thus, Mexican drivers are exempt.
- ▶ Mexican drivers in the pilot program are also exempt from complying with U.S. physical fitness qualifications. Even though FMCSA admits that Mexican physical fitness regulations are very different from U.S. requirements, FMCSA simply states that it regards the requirements of the two countries as equivalent.

FICTION: The DOT letter claims that the OIG Report says that it is necessary to start the pilot program.

FACT: The OIG Report does **NOT** declare that the pilot program should be started.

- ▶ The OIG Report is neutral on this point and only states that “if the Secretary elects to initiate the project following her report to Congress, we will be required under Section 6901 to monitor and review the demonstration project and submit an interim and final report to the Secretary and the Congress.”