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OPENING THE BORDER – SHUTTING OUT SAFETY

**THE DOT Truck Pilot Program
Defrauds Safety,
Disregards Federal Laws and
Denies Public Access to Information**

Congress Acts, But DOT Is Lax

Section 6901 of the U.S. Troop Readiness, Veterans Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Pub. L. 110-28 (May 25, 2007), requires that federal funds appropriated for the U.S. Department of Transportation (DOT) may be expended to grant authority to Mexico-domiciled motor carriers to operate beyond the U.S. municipalities and commercial zones on the U.S.-Mexico border only after certain enumerated conditions are met.

First, section 6901(a) requires that operating authority may be granted:

- (1) only as part of a pilot program that
- (2) complies both with the requirements for cross-border trucking contained in section 350 of Public Law 107-87 (2001) and the requirements for statutory pilot programs contained in section 31315(c) of title 49 United States Code, and
- (3) provides reciprocal authority for U.S. motor carriers to operate in Mexico.

Second, subsection (b)(1) of section 6901 requires that before any pilot program can begin, the DOT Inspector General (IG) must transmit to Congress and the Secretary of Transportation a report verifying compliance with all the elements in section 350(a) of Public Law 107-87, including whether sufficient mechanisms have been established to apply Federal motor carrier safety laws and regulations to motor Mexico-domiciled motor carriers operating in the United States. Subsection (b)(2)(A) requires the Secretary of Transportation to take action to address any issues raised in the DOT IG's report and to submit a report to Congress detailing the corrective actions that have been taken.

Third, subsection (b)(2)(B) of section 6901 requires publication and a sufficient opportunity for public notice and comment on information in five areas:

- pre-authorization safety audits;
- specific measures to protect the health and safety of the public, including enforcement measures for noncompliance;
- specific measures to ensure compliance with regulations requiring commercial drivers have English language proficiency, and the prohibition against point-to-point freight transportation within the U.S.;
- the specific standards to be used to evaluate the pilot program and compare any change in the level of motor carrier safety that results from the pilot program; and,
- the list of U.S. laws and regulations that Mexico-domiciled motor carriers and drivers, operating within the U.S., will not be required to comply with, and the corresponding Mexican law or regulation which the Secretary of Transportation will accept for the purpose of compliance, including an analysis as to how the U.S. and Mexican laws and regulations differ.

DOT Ignores and Disregards Congressional Mandates to Ensure Safety

The Federal Motor Carrier Safety Administration (FMCSA), responding on behalf of DOT and the Secretary of Transportation, issued a notice in the *Federal Register* on June 8, 2007. That notice specifically states that it is only addressing the third set of items included in section 6901(b)(2)(B), that is, the list of information that must be published in the *Federal Register* and for which the public must be provided sufficient opportunity for public notice and comment.

The FMCSA notice only briefly addresses the basic requirement contained in section 6901(a)(2) that any pilot program comply with both the cross-border trucking safety requirements in section 350 of Public Law 107-87, as well as the requirements for conducting pilot programs in 49 U.S.C. § 31315(c). Although the agency notice claims that those two laws have been satisfied, the analysis below proves that, in fact, FMCSA has not fully complied with all the requirements of either section 350 or section 31315(c).

In addition, the agency notice does not mention the fact that section 6901(b)(1) requires the DOT IG to file a report verifying whether DOT has complied with the elements of section 350(a), or that section 6901(b)(2)(A) requires the Secretary of Transportation to take necessary actions in response to issues raised in the DOT IG's report and then to submit a report to Congress regarding the actions that have been taken.

The FMCSA Notice Flagrantly Violates Section 6901(a)(2)

Section 6901(a)(2) comprises two sets of requirements: full compliance with cross-border trucking safety requirements in section 350 of Public Law 107-87, and full compliance with the law governing the conduct of pilot programs contained in section 31315(c), title 49 United States Code. The FMCSA notice does not indicate compliance with either law.

Failure to Comply with Section 350: Despite FMCSA's statement that "the provision in the 2007 supplemental appropriations act mandating that the demonstration project satisfy the requirements of section 350 has already been satisfied," 72 FR 31877, 31878 (June 8, 2007), there are unresolved issues regarding section 350 compliance.

First, the last DOT IG report indicated that there were still outstanding issues that had not been completed including the agreement on hazardous materials transportation, which the report stated, was a "precondition[] to opening the border." IG Report No. MH-2005-032 (Jan. 3, 2005). Other outstanding issues include "bus coverage," "and the comprehensiveness of the data systems used to monitor Mexican driver records in the United States." *Id.* These issues cannot be resolved by excluding hazardous materials and buses (motorcoaches) from the pilot program. This amounts to self-selection, or "cherry-picking," by DOT.

Instead, the agency has substituted its discretion for the express instruction of Congress and has unilaterally determined which provisions of federal law it chooses to comply with in section 350 before permitting Mexico-domiciled motor carriers to engage in operations beyond the border commercial zones. This cherry-picking not only openly defies the purpose and intent of section 350, but also the requirement in section 6901 (a)(2) that reiterates that "such pilot program compl[y] with the requirements of section 350 of Public Law 107-87..." Congress clearly intends that all elements of section 350 be fully complied with and completed prior to any Mexico-domiciled vehicle being permitted to drive beyond the border commercial zones.

Second, the FMCSA notice makes no mention of the impending DOT IG follow-up report discussed in the IG's testimony before the Senate Committee on Appropriations, Subcommittee on Transportation, Housing and Urban Development, and Related Agencies, presented on March 8, 2007. The IG testimony stated that the issues regarding the hazardous materials agreement, bus inspection facilities and the comprehensiveness of the data system for monitoring Mexico-domiciled drivers in the U.S. were still not

resolved. FMCSA cannot proceed without the DOT IG submitting the next follow-up report and then only if that follow-up report verifies unequivocally that the DOT has completed all the requirements in section 350.

Third, section 6901(b)(1) also requires that “prior to the initiation of the pilot program” the DOT IG must produce a report verifying compliance with each of the requirements of section 350(a) and, the Secretary is required to take action to address any issue raised by the IG report and the report to Congress regarding what actions were taken by DOT in response to the IG report. The DOT IG has not previously been required to verify completion of the elements in section 350(a). This new reporting requirement by law must be completed prior to the start of the pilot program. There is no mention of this requirement anywhere in the agency notice of June 8, 2007.

Failure to Comply with section 31315(c): Although the FMCSA notice states “that the demonstration project satisfy [sic] the pilot program statutory provision is satisfied through the May 1, 2007, notice, and the additional details contained in this notice[,]” 72 FR 31878, this is clearly inaccurate and misleading. The prior May 1, 2007, notice does not cite section 31315(c) or even refer to the pilot program statutory provision. In the June 8, 2007, notice the FMCSA repeats in summary fashion (in a single paragraph) the elements required of a genuine pilot program but makes no effort to explain how the demonstration project complies with those elements. In fact, even though the agency notice discusses aspects of the project that are clearly an innovative motor carrier safety scheme, and also describes three major federal regulations from which participating Mexican-domiciled motor carriers and drivers will be exempt – and allowed to meet an alternative set of requirements – FMCSA utterly fails to describe how the demonstration project complies with the other agency duties mandated for the conduct of pilot programs under section 31315(c), including the following:

- **Innovative Approach to Motor Carrier Safety** – The project is clearly a test of long-haul Mexico-domiciled motor carrier operations in the U.S. in several ways that has not previously occurred and thus amounts to an “innovative approach” under section 31315(c). The FMCSA ignores this feature of Sec. 31315(c).
- **Alternatives to FMCSRs** – The project is also an application of an alternative regulatory scheme. FMCSA actually asserts that it is declaring equivalence between three areas of Mexican regulations with U.S. regulations. That list is incomplete because there are at least five areas in which FMCSA will accept adherence by Mexican-domiciled truck drivers to modifications of U.S. regulatory requirements.
 - **Drug and Alcohol Testing:** FMCSA grants permission to use Mexican personnel in Mexico to take drug samples supposedly adhering to the U.S. procedures and forms. There is no way to verify that drug samples actually are valid within the chain of custody prior to testing in the U.S. The DOT IG testified before the Senate Appropriations Subcommittee on March 8, 2007, that his office could not verify what chain of custody procedures are used by Mexican authorities to secure specimen samples in Mexico.
 - **Commercial Drivers’ License:** The declared equivalence of the Licencia Federal de Conductor (LFC) and the U.S. CDL is on its face an alternative

regulation to the U.S. CDL requirements because anecdotal information indicates that all LFC holders are automatically qualified to transport hazardous materials, and some types of the LFC allow mixed transportation of both freight and passengers, among other differences.

- Driver Medical/Physical Qualifications: Because the physical qualifications for Mexican commercial drivers may be different than those required for U.S. truck drivers, and the medical examination may also be different, FMCSA is actually declaring the two countries' commercial driver physical qualifications to be equivalent. FMCSA does not address the separate issue of Mexican physical qualifications because, since the physical examination is a pre-requisite for the LFC, unlike the U.S. CDL system, the agency has already declared equivalence of the U.S. CDL with the Mexican LFC in 1992. In neither case does the agency reveal the actual standards applied in Mexico.
 - Driver Disqualification Standards: Since Mexican driver disqualification standards are admitted by FMCSA to differ from U.S. standards, the agency is imposing "a system for monitoring the performance of Mexican drivers while in the U.S. and taking steps to disqualify these drivers if they incur violations that would result in a U.S. driver's license being suspended." 72 FR 31884. This includes violations in a non-CMV that results in suspension or revocation of a non-CMV license of a U.S. commercial driver, a violation that may not exist in Mexico.
 - Hours of Service Regulations: There is no hours of service (HOS) regulation in Mexico that is comparable to the U.S. HOS rules. Nevertheless, FMCSA claims that permitting Mexican-domiciled truck drivers into the U.S. does not amount to testing an alternative regulation because Mexican truck drivers are required to follow U.S. HOS rules when driving in the U.S., and they must present paper logbooks recording their on/duty and off/duty hours for the prior 7 days when entering the U.S. This is a paperhanging exercise intended to afford a semblance of similarity when, in fact, Mexico has no HOS regulation comparable to the U.S. rules and Mexican law does not require truck drivers to maintain logbooks in Mexico. Presentation of logbooks created solely for the purpose of entering the U.S. is intended to make the entry of Mexican truck drivers into the U.S. appear to conform to U.S. HOS regulations but is actually a meaningless exercise that does not render the lack of HOS regulation in Mexico comparable to the U.S. HOS rules. This is another area in which the FMCSA is falsely accepting a glaringly different Mexican regulatory system as comparable to the U.S. regulation.
- **Equivalent or Greater Safety** – Although FMCSA claims fulfillment of this threshold requirement in the notice, 72 FR 31878, there is no separate finding of fact on which to base a determination that the demonstration project achieves an equal or greater level of safety than to allow Mexico-domiciled motor carriers to continue to conduct commercial zone-only operations.
 - **Maximum Three Years for Pilot Programs** – FMCSA nowhere in the notice demonstrates that a one-year pilot program is a sufficient amount of time to gather

scientifically credible data on the safety impacts of the project. Also, since the agency apparently plans to ramp up participation by adding 25 participating motor carriers each month over a four month period (according to an interview with Administrator John Hill in the June 4, 2007, issue of *Transport Topics*), it is unclear whether the previously announced one-year time limit for the project would be stretched to 16 months in order to give each motor carrier one year of experience participating in the project.

• **Specific Data Collection and Safety Analysis Plan That Identifies a Method for Comparison** – There is no description in the June 8, 2007, notice of any specific, scientifically rigorous measures for data collection, including how the agency would control for confounders. The agency also states that the comparison group for comparing the safety impact of the project participants will be all other U.S. motor carriers with respect to crash data, that is project participants with a Mexican license (LFC) compared to all U.S. CDL drivers, truck maintenance of project participants compared with all U.S. trucks, comparison of pre-authorization safety audit critical safety regulation violations for participant motor carriers compared with all new entrant U.S. motor carriers, and any other safety problems “in the course of implementing the demonstration project.” 72 FR 31883. The agency plans to compare the limited record of the select group of project participants with the overall record of all U.S. motor carriers and drivers in general. This is not only an unfair basis for comparison, but FMCSA is ignoring scientific, peer-accepted principles of how a comparison or control group is carefully selected to compare with a study group. The agency also fails to fulfill Section 6901(c)(3) that directs the Secretary to ensure that “the pilot program consist[] of a representative and adequate sample of Mexico-domiciled carriers likely to engage in cross-border operations beyond United States municipalities and commercial zones on the United-State Mexico border.” Cherry-picking only scrupulously screened Mexican motor carriers and not comparing them against a comparable cohort, but against all U.S. motor carriers, is not selecting “a representative” sample of all Mexican motor carriers that might be allowed to operate interstate in the U.S.

• **Reasonable Number of Participants Necessary for Yielding Statistically Valid Findings** – There is no explanation of how the number of trucks, drivers, and motor carriers finally chosen to participate in the project is sufficient for statistical adequacy, including sufficient statistical power for defensible inferences about claimed outcomes of the project as applied to other Mexico-domiciled motor carriers that could be granted authority to operate long-haul in the U.S.

• **Adequate Countermeasures to Protect the Health and Safety of Project Participants and the General Public** – For the general public, FMCSA states that it “has developed an extensive oversight system to protect the health and safety of the public and FMCSA will apply it to Mexico-domiciled motor carriers.” 72 FR 31880. However, these measures are simply a recitation of the entire body of motor carrier regulations in title 49 CFR. There is no statement of any special countermeasures chosen specifically for the project that uniquely protect the health and safety of the public. For protecting project participants, FMCSA is silent on any way to address this part of Sec. 31315(c)(2)(E).

- **A Plan to Inform State Partners and the Public about the Pilot Programs and to Identify Approved Participants to Safety Compliance and Enforcement Personnel and to the Public – Identification to Safety Compliance Personnel:** This requirement of Sec. 31315(c) is not cited by FMCSA, but the use of the ‘MX’ suffix behind a U.S. DOT number assigned with provisional operating authority probably meets this requirement. 72 FR 31881-31882.

Identification to the Public: There is no stated plan on how the general public will be informed as to how to identify the project participants.

- **Authority to Revoke Participation –** FMCSA does not separately address this part of Sec. 31315(c). Although not indexed specifically to Sec. 31315(c)(3), FMCSA’s discussion of what are the violations under *On-Going Monitoring*, 72 FR 31882, and the findings of Compliance Reviews of project participants, *id.*, apparently constitute the grounds for revoking participation. For the latter, “[a]ny Mexico-domiciled motor carrier operating as part of this demonstration program will immediately be subject to suspension and revocation of its registration if it receives an Unsatisfactory safety rating.” This approach fails to embrace the NTSB recommendation that **either** a serious driver **or** vehicle violation **alone** should result in an Unsatisfactory rating and the initiation of the process to shut down the company. For example, FMCSA does not state that serious hours of service and logbook violations by program drivers will result in an Unsatisfactory rating and revocation of participation.

- **Authority to Terminate Program –** This is not directly addressed by FMCSA in the June 8, 2007, notice. The agency makes no mention of what bases it might use to stop the pilot program early.

- **Report to Congress:** This is ignored by FMCSA in the June 8, 2007, notice.

The FMCSA Notice Ignores a Required Inspector General Report and DOT’s Legislated Duty to Respond to the IG Report Findings

As discussed above, section 6901(b)(1) also requires that “prior to the initiation of the pilot program” the DOT IG must produce a report verifying compliance with each of the requirements of section 350(a). The Secretary of Transportation must then take action to address any issue raised by the IG report and report to Congress regarding what actions were taken by DOT in response to the IG report. Section 6901(b)(2)(A). The DOT IG has not previously been required to verify actions taken by DOT under section 350(a). This new reporting requirement, by law, must be completed prior to the start of the pilot program. There is no mention of this requirement in the agency notice of June 8, 2007.

FMCSA Rushes Public Comment But Keeps Its Own Records Secret

Section 6901(b)(2)(B) requires publication of information in the *Federal Register* and that the agency must “provide sufficient opportunity for public notice and comment.” The notice was issued, i.e., signed by the FMCSA Administrator, on June 5, 2007 (72 FR 31885), but was not published in the *Federal Register* until June 8, 2007. Since the FMCSA requires public comments must be received no later than June 28, 2007 (*id.* at 31877), the public has been given only 20 days notice of the new information provided about the demonstration project. This is

neither “sufficient opportunity for public notice and comment” as required by section 6901(b)(2)(B), nor the traditional minimum 30-day notice that accompanies even the most trivial and uncontroversial agency regulatory notices.

By contrast, for example, the prior demonstration project notice of May 1, 2007, consisted of only four pages and contained little information and no new details yet the agency provided 30 days for notice and comment. *See* 72 FR 23883. Although the supplemental notice is more than four times as long as the initial demonstration project notice (consisting of 18 pages in the *Federal Register*), responds in part to a newly enacted statute, and provides new factual information regarding the conduct of the pre-authorization safety audits as well as never before disclosed information about the differences between three critical aspects of U.S. and Mexican regulatory approaches, the FMCSA is permitting the public less than three weeks in which to comment.

This foreshortened opportunity for public comment also comes against the backdrop of FMCSA’s failure to make public records regarding the development of the demonstration project that have been legally requested over 8 months ago by Advocates for Highway and Auto Safety (Advocates) under the Freedom of Information Act, 5 U.S.C. § 552. Without those records Advocates and the public are unable to properly evaluate the demonstration project or formulate appropriate lines of questions regarding the safety of the program.

- (I) **Pre-authorization Safety Audits (PASA):** FMCSA has provided a tabulation of the status of 107 motor carriers but has not provided any details about why each motor carrier passed, failed or withdrew its application. Of the 33 motor carriers listed in column “F” as having “passed” the PASA, 6 motor carriers do not have an entry in column “J” indicating that they passed verification of the five mandatory elements required by FMCSA, and no explanation is provided as to how a motor carrier can have “passed” the PASA without obtaining a passing mark, that is, indicated by a “yes” entry in column “J”.

Since nearly half of the listed applicant motor carriers have either withdrawn their applications or failed their PASAs, it is unclear how FMCSA will fulfill its promise to obtain participation from a wide cross section of motor carriers that is representative of the range of trucking companies in Mexico. As indicated earlier, this representativeness is a requirement of Section 6901(c)(3). Based on the list provided in Tables 2-4, the agency will be unable to select a representative, credible scientific sample of motor carriers to participate in the pilot program.

- (II) **Public Health and Safety:** FMCSA has no specific measures for protecting the health and safety of the public. The agency points to the fact that the Federal motor carrier safety regulations (FMCSRs) exist but it does not provide any discrete or specific measures the agency will take to ensure public safety. While the agency asserts that it is imposing “a system for monitoring the performance of Mexican drivers while in the U.S. and take steps to disqualify these drivers if they incur violations that would result in a U.S. driver’s license being suspended[,]” 72 FR 31884, the agency does not provide any details on the monitoring system and what, if any, additional efforts will be part of the monitoring system above and beyond normal border license and CVSA decal checks, and roadside inspections.

Moreover, although FMCSA initially promised that an inspection would take place for “every truck – every time” a project participant crossed the border, the agency in fact has reneged on this promise, now only asserting that “[w]hen crossing the border these trucks will, at a minimum, be checked to verify that the driver is properly licensed and that the vehicle displays a current CVSA inspection decal.” *Id.* at 31882. Checking for the presence of a current CVSA decal and a valid LFC is not an inspection of every truck and every driver participating in the project each time they cross the border. In fact, one of the most important aspects of participant driver monitoring should be careful, repeated inspection of Mexican drivers’ paper logbooks showing their records of duty. However, FMCSA makes it apparent that drivers will often enter the U.S. and proceed beyond the commercial zones to haul interstate freight, often for several days, and then return to Mexico without having their logbooks reviewed. This allows repeated violations of U.S. hours of service requirements to go undetected.

The agency itself makes it clear in the notice that the border crossing “check” is not the equivalent of inspections of vehicle and driver. *Id.* This agency stance reinforces the skepticism of the U.S. DOT Inspector General in his March 8, 2007, Congressional testimony that casts doubt on the agency’s ability to live up to the “every truck – every time” inspection promise. In fact, we expect that Mexican trucks and its drivers will not be inspected most of the time when they cross the border into the U.S.

(III) English Proficiency and Point-to-Point Freight Movement in the U.S.:

English Proficiency: With respect to English proficiency compliance with 49 CFR Part 391.11(b), the agency fails to demonstrate that it will ensure, at the border, that every driver participating in the project will be required to demonstrate English proficiency with regard to the four separate requirements specified in the regulation. Instead, the agency appears to indicate that such complete verification of all four prongs of the regulation will occur only if some unspecified dissatisfaction occurs on the part of a U.S. federal or state inspection official “when [they] interact with the driver in English,” and if “there appears to be a communication problem, the driver will be directed to a site where a full driver inspection will be conducted.” This unspecified “interaction” with the driver does not fulfill the requirement in Section 6901 for verifying, in each instance, that a project driver meets each of the four requirements of the English proficiency regulation. As a result of this lax approach, law enforcement officials may find out that a participating driver does not have the required proficiency in English until after a crash or the driver is stopped for a dangerous traffic violation.

Point-to-Point Freight Movement: With regard to point-to-point movement of freight within the U.S., or “cabotage,” the FMCSA has no reliable figures or information regarding the relationship of operating authority violations to cabotage violations. The small proportion of discovered instances of operating authority violations involving Mexican-domiciled trucks in the U.S. indicates that not only are a tiny percentage of operating authority violations are detected, but

that the agency has no idea how many of these involved a violation of cabotage authority.

(IV) FMCSA’s Pilot Program is Rigged to Be Declared a Success, and Public Safety Is the Loser

FMCSA’s response to the statutory requirement for adopting standards for evaluating the pilot program and comparing changes in the level of safety is thoroughly unacceptable. The agency must fairly and objectively evaluate the pilot program, as required in section 6901, by stating what criteria it will use. Instead, the agency provides no specific criteria for determining that the pilot program is successful or that it is a failure.

Although the agency lists the factors it will use for such an evaluation of the pilot program, such as “crash rate” and out-of-service orders, at no point does it also provide the specific criteria, including specific thresholds, that it will apply to evaluate the pilot program against a specific working hypothesis of safety. That is, FMCSA does not state the specific levels of safety for each criterion that will be applied, in the first instance, to the participants in the pilot program and that will later be considered acceptable for the purpose of determining whether to open the border generally to long-haul commerce by Mexico-domiciled motor carriers. This means that the agency can apply any after-the-fact rationalization to justify the success of the program and to use that asserted success to trigger increased long-haul freight and passenger commerce throughout the U.S. by Mexico-domiciled motor carriers.

Moreover, FMCSA does not respond to the statutory command to state the specific criteria by which the agency will deem the pilot program to be a success or a failure. It points out that the agency will use the 11 “critical violations” to vet each project participating carrier, 72 FR 31883-31884, any one of which will be deemed to be a failure of the PASA, which only addresses participants’ attempt to cross the threshold to gain participation in the pilot program. This does not indicate what violations, if any, would cause that agency to

Finally, stating that the safety records of a limited number of select project participants will be measured against the safety record of the entire trucking industry, with over 760,000 motor carriers, is not a fair standard for comparison given the ongoing, high out-of-service (OOS) rates for drivers and vehicles found in roadside inspections such as the annual Commercial Vehicle Safety Alliance (CVSA) RoadCheck. It is also inadequate because only a small minority of U.S. motor carriers has undergone recent Compliance Reviews with timely safety ratings. In addition, the scrutiny of motor carriers and drivers participating in the pilot program, including every border entry even if just for a license and CVSA sticker check, far exceeds the review and supervision to which U.S. motor carriers and drivers are regularly subjected to. In any case, a standard of safety comparison with U.S. motor carrier safety records taken as a whole is not a demanding demonstration of a high degree of safety for Mexico-domiciled motor carriers, especially in light of the fact that Canadian motor carriers have superior vehicle and driver inspection OOS rates in comparison to U.S. carriers.

(V) **List of Comparable U.S. and Mexican Laws and Regulations**

As already discussed earlier, FMCSA does supply such a list for three areas of declared equivalence. 72 FR 31884-31885. However, that list is incomplete and provides little detailed information, containing only terse characterizations on the content of numerous Mexican laws and regulations on drug and alcohol testing, the LFC, and Mexican commercial driver physical fitness standards. The basic Mexican laws, regulations, and standards, including the particular requirements of each, are not provided for public evaluation and comparison with U.S. law, regulations, and standards.

For example, the specific physical qualification standards used for the Mexican LFC examination are not provided so that the public can determine whether, in fact, they are equivalent to U.S. physical qualification standards and that the Mexican commercial driver medical examination performed by Mexican health care providers rises to the level of U.S. medical examinations. Moreover, the agency does not provide any information on why many other areas of motor carrier safety compliance in the U.S. do or do not have parallels in Mexican laws, regulations and standards, including “processes” and enforcement practices, and whether and to what extent in those areas where such parallels exist, why and how the Mexican law, regulation, or standard falls short of or otherwise cannot be regarded as equivalent to the U.S. standard.

As a result, it may be the case that Mexico-domiciled motor carriers, vehicles, and drivers are being evaluated for participation in a pilot program permitting long-haul freight transportation despite the fact that they may be subject to incomplete or inferior safety laws, regulations, and standards in other, unspecified areas of the motor carrier safety regime in Mexico. For example, this appears to be the case with regard to drivers’ HOS regulation, discussed above. Based on information gleaned from media reports and Congressional hearings there are no specific HOS requirements for Mexican commercial drivers that are comparable to the U.S. HOS regime. Yet FMCSA regards as acceptable to require project participants to create a paper logbook that shows compliance with some unspecified, different standard governing Mexican commercial driver duty and off-duty time while operating in Mexico for the seven days prior to seeking entry into the U.S. Hence, the agency’s assertion that it is deeming only three areas of Mexican law and regulation comparable to U.S. regulations cannot be taken at face value. Since this assertion is thoroughly uncorroborated, as there has not been full public disclosure of the actual Mexican laws and regulations that the agency is accepting as identical or comparable, it is uncertain how many other regulatory issues fall into this category. In sum, this response by the agency does not meet the intent of this aspect of Section 6901(b)(2)(B).

CONCLUSION:

Careful analysis of each provision of Sec. 6901 unarguably shows that FMCSA intends to justify opening the border to unimpeded long-haul commerce by Mexico-domiciled motor carriers in direct defiance of a Congressional mandate to carry out essential actions before even considering such a major change in U.S. motor carrier safety policy.

It is clear that FMCSA intends to justify the outcome of the pilot program regardless of any contrary evidence and has consigned the interpretation of the success of the program solely to agency discretion while openly disregarding any of the checks placed on the agency by Congressional legislation. The pilot program is rigged to “prove” the safety of opening the border to all Mexico-domiciled trucking companies by: including a hand-picked sample of motor carriers; providing only limited information to the public for its evaluation and comment; concealing enormous amounts of critical, detailed information on the development of the pilot program, such as the Mexican licensing and alcohol/drug testing regulations that have been, without proof, declared equivalent to U.S. regulations; and failing to specify the precise criteria the agency will use to evaluate the safety of the pilot program.

The pilot program is a brazen attempt to ram through a major change in public safety policy regardless of the consequences – a dangerous policy that will ultimately threaten the lives and safety of every motorist who travels U.S. streets and highways.