

**FOLLOW-UP AUDIT ON THE
IMPLEMENTATION OF THE NORTH
AMERICAN FREE TRADE AGREEMENT'S
CROSS-BORDER TRUCKING PROVISIONS**

Federal Motor Carrier Safety Administration

Report Number: MH-2009-068

Date Issued: August 17, 2009



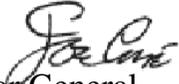
Memorandum

United States Department of
Transportation

Office of the Secretary
of Transportation
Office of Inspector General

Subject: **ACTION:** Report on Follow-Up Audit of
Implementation of the North American Free Trade
Agreement's Cross-Border Trucking Provisions
Federal Motor Carrier Safety Administration
Report Number MH-2009-068

Date: August 17, 2009

From: Joseph W. Comé 
Assistant Inspector General
for Surface and Maritime Program Audits

Reply to
Attn. of: JA-40

To: Acting Deputy Administrator, Federal Motor Carrier Safety Administration

This report presents the results of our audit of the North American Free Trade Agreement's (NAFTA) cross-border trucking provisions. Transportation appropriations legislation since fiscal year (FY) 2002¹ requires the Office of Inspector General (OIG) to annually review the Federal Motor Carrier Safety Administration's (FMCSA) compliance with eight safety criteria set forth in section 350(c) of the FY 2002 Act. The eight safety criteria relate to potential Mexico-domiciled motor carrier operations beyond the commercial zones.²

The Omnibus Appropriations Act of 2009 (Omnibus Act)³ extended OIG's requirement to review the eight safety criteria and ended the Department's ongoing NAFTA Cross-Border Trucking Demonstration Project (Demonstration Project), which allowed up to 100 Mexican motor carriers to operate in the United States beyond commercial zones. Exhibit A details the eight safety criteria and our audit requirements.

¹ FY 2002 Department of Transportation and Related Agencies Appropriations Act (the FY 2002 Act), Pub. L. No. 107-87 (2001).

² Commercial zones at the United States-Mexico border (the southern border) generally extend from 3 to 25 miles north of United States border municipalities (or 75 miles within the State of Arizona).

³ Pub. L. No. 111-8 (2009).

BACKGROUND

Our last report on NAFTA cross-border trucking provisions, issued in August 2007,⁴ concluded that FMCSA had sufficient staff, facilities, equipment, and procedures in place to meet the section 350 criteria. We made four recommendations to FMCSA, two of which centered on improving implementation of criteria six and seven, as shown in table 1. Exhibit B provides more detailed information on the status of the eight criteria and details FMCSA's actions taken.

Table 1. FMCSA's Actions to Implement Section 350(c) Criteria

Section 350(c) Criteria	FMCSA's Actions as of August 2007
(1) Hiring and training border inspectors.	<i>Met the criteria—On-board staff is near authorized strength and has been trained.</i>
(2) Training inspectors conducting on-site reviews as safety specialists.	<i>Met the criteria—Training was completed.</i>
(3) Not transferring inspectors to fill positions.	<i>Met the criteria—No transfers were identified.</i>
(4) Implementing an hours of service policy.	<i>Met the criteria—Policy has been implemented.</i>
(5) Having a sufficiently accurate, accessible, and integrated information infrastructure and adequate telecommunications links.	<i>Met the criteria—In place and being used.</i>
(6) Having adequate capacity at southern border to conduct meaningful inspections.	<i>Substantially met the criteria. The capacity to perform truck, bus, and driver inspections are in place, but FMCSA needed to include bus inspections during peak hours, such as holiday periods, at Laredo, Texas.</i>
(7) Having sufficient databases to allow safety monitoring of Mexican carriers and drivers.	<i>Substantially met the criteria. Databases are in place, but FMCSA needed to improve the consistency of Mexican traffic conviction reporting to the Mexican Conviction Database (formerly the 52nd State System).</i>
(8) Having measures to effectively enforce and monitor Mexican carrier licensing.	<i>Met the criteria—Enforcement rules were implemented and states have adopted out of service criteria.</i>
Source: OIG	

For this audit, our objective was to assess FMCSA's ongoing compliance with the section 350(c) safety criteria since our August 2007 report. We also assessed FMCSA's implementation of two OIG recommendations made in August 2007 that pertain to issues not related to section 350(c). We recommended that FMCSA (1) implement a policy on using vehicle model year data to indicate Mexican vehicle compliance with Federal Motor Vehicle Safety Standards (FMVSS) and record vehicle identification numbers as part of a safety inspection and (2) establish an action plan, in coordination with other Department offices, to address concerns regarding Mexico's drug and alcohol testing of Mexican

⁴ OIG Report Number MH-2007-062, "Follow-Up Audit of the Implementation of the North American Free Trade Agreement's (NAFTA) Cross-Border Trucking Provisions," August 6, 2007. OIG reports can be found on our website: www.oig.dot.gov.

commercial drivers. Exhibit C provides the results of our review of these two issues and two additional pertinent issues that we identified in our series of reports⁵ on the NAFTA Demonstration Project.

We conducted this performance audit from June 2008 through June 2009, in accordance with Generally Accepted Government Auditing Standards as prescribed by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Exhibit D details our audit scope and methodology.

RESULTS IN BRIEF

Since we began reporting on section 350(c) criteria in June 2002, FMCSA has continually taken actions to address our recommendations for improvements in the border safety program. For example, most recently, FMCSA (1) implemented improved data quality control measures and action plans to correct inconsistencies in state reporting of Mexican traffic conviction data; (2) issued peak hour bus inspection procedures to its border staff in Laredo, Texas; and (3) conducted a study of bus facilities and staffing at southern border crossings.⁶ Despite these positive actions, further efforts are still needed to improve the consistency of information reported to the Mexican Conviction Database (MCDB) and to improve the capacity to perform safe and efficient bus inspections at border crossings.

First, states continue to inconsistently report traffic convictions incurred by holders of Mexican driver's licenses to the MCDB. For example, New Mexico's reporting of first quarter traffic convictions for calendar year (CY) 2008 was delayed until the second quarter of that year. Also, Missouri reported traffic convictions of Mexican drivers in non-commercial vehicles, while other states did not. Moreover, current traffic conviction reporting requirements and monitoring procedures make it difficult to account for the possibility that Mexican Federal commercial driver's license (CDL) holders operating in the United States could also legally hold another Mexican-issued driver's license. Inconsistent reporting or monitoring problems make the system vulnerable to incomplete information or delays. As a result, any conviction information that is not reported or delayed

⁵ In response to section 6901 of the United States Troop Readiness, Veteran's Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, OIG issued initial, interim, and final reports on this project.

⁶ According to FMCSA, a study was completed in October 2008, but has not been approved for release.

could result in Mexican Federal CDL holders continuing to drive in the United States after incurring a disqualifying traffic offense.⁷

Second, performing safe and efficient bus inspections at border crossings continues to be a challenge for FMCSA. Buses are less likely to be subject to inspections at the southern border, especially at non-commercial crossings that are not staffed by inspectors or at crossings for which inspections do not occur during evenings and weekends. Further, at two non-commercial crossings, the bus inspection space provided by Customs and Border Protection (CBP) was unsafe due to the proximity to moving traffic, which may deter inspectors from performing certain inspections. These constraints lessen the impact border inspections have as a deterrent to unsafe buses entering the United States.

We are making a series of recommendations to FMCSA to address inconsistent MCDB reporting and to make improvements in its Bus Inspection Plans.

PROBLEMS WITH MCDB DATA CONSISTENCY AND BUS INSPECTION CAPACITY REMAIN

FMCSA continues to meet the eight section 350(c) safety criteria, as reported in our August 2007 report, and has taken actions in response to two recommendations in that report. Specifically, FMCSA concurred with OIG's recommendations for:

- having sufficient databases to allow safety monitoring of Mexican carriers and drivers. FMCSA agreed to (1) ensure state action plans addressing reporting problems are completed, (2) obtain monthly data reports and notify states of inconsistencies found, and (3) provide guidance on tracking inconsistencies to FMCSA Division Administrators.
- having adequate capacity at southern border to conduct meaningful bus inspections. FMCSA agreed to (1) modify the Bus Inspection Plan for Laredo, Texas, to ensure coverage during periods of peak traffic, including holidays; (2) work with CBP to determine the effectiveness of the plan; and (3) study bus activities and operations at southern border crossings.

Although FMCSA took actions in response to our August 2007 recommendations, we identified additional improvements to address problems that remain for the safety criteria related to consistent data reporting in the MCDB and having adequate bus inspection capacity.

⁷ Holders of CDLs in the United States, by law, must be disqualified for specific traffic offenses committed while operating a commercial motor vehicle or for specified offenses committed while driving a non-commercial vehicle, such as a passenger car or a rental car.

Inconsistent State MCDB Reporting of Traffic Convictions Remain

Our current work re-examined the data inconsistencies noted in our August 2007 report. Our assessment of the MCDB found that: (1) states continue to inconsistently report traffic convictions incurred by holders of Mexican driver's licenses to the MCDB; (2) FMCSA's quality control plan, intended to address inconsistencies with the MCDB, did not include all procedural elements; and (3) vulnerabilities existed regarding the treatment of different categories of traffic convictions and types of Mexican-issued licenses

States Continue To Inconsistently Report Traffic Convictions Incurred by Holders of Mexican Driver's Licenses

Our analysis of MCDB data from January to September 2008 showed some improvement in state reporting of data on Mexican traffic convictions incurred in the United States, when compared to CY 2007 reporting. However, we concluded that inconsistencies in state reporting continue to exist. Specifically:

- New Mexico's CY 2008 first quarter convictions were not reported until the second quarter of CY 2008. According to FMCSA, new state staff was not aware of the MCDB reporting requirements.
- Arizona reported only 66 convictions for most of CY 2008 (from January to September 2008) in comparison to the 229 convictions reported in CY 2007. FMCSA asserted that Arizona reported all convictions and attributed Arizona's low CY 2008 reporting to court non-compliance, reduction in CDL-related state law enforcement activities due to budget cuts, and reductions in commercial driving due to the economic downturn.

Any conviction information that is delayed or not reported, including information on convictions incurred while driving a non-commercial vehicle, could result in Mexican Federal CDL holders continuing to drive in the United States after incurring a disqualifying traffic offense. We should note that we did not identify specific examples where inconsistent reporting of convictions allowed a Mexican Federal CDL holder to drive in the United States after incurring a disqualifying traffic offense. However, by eliminating the existing inconsistencies in state reporting, FMCSA would have greater assurance that Mexican commercial drivers are qualified to drive in the United States.

The MCDB Quality Control Plan Did Not Include All Procedural Elements

Since our August 2007 report, FMCSA developed state action plans to help states correct reporting inconsistencies and has worked with states to complete the plans. Additionally, in January 2008, FMCSA instituted a quality control plan for the

MCDB, in which quarterly reports of state MCDB data are generated and provided to FMCSA Division Administrators for review and action.

Although FMCSA implemented its quality control plan for the MCDB and provided states with a download of state-recorded MCDB data for review, we found that FMCSA's actions regarding the quality control plan differed from what FMCSA proposed in its response to our August 2007 report. Specifically, FMCSA did not implement a proposed procedure to provide monthly reports to its Division Administrators identifying data inconsistencies. Instead, FMCSA implemented a procedure to provide state quarterly-recorded MCDB data. If a state did not have quarterly data, even though a history of convictions reported existed, no report was generated.

Additionally, we found that the quality control plan procedures were transmitted informally, that is, via an email from FMCSA to regional offices with broad instructions to "...follow-up with your states and verify that the information is correct." The quality control plan also did not contain a proposed follow-up procedure mechanism or guidance on how to track state data corrections.

The MCDB Was Vulnerable to Incomplete Information

According to FMCSA, the MCDB is not required, but was put in use until Mexico's Licencia Federal Information System (LIFIS) was fully developed and operational to track Mexican Federal CDL holders. FMCSA contracted with TML Information Services, Inc., (TML) to maintain the MCDB and uses the driver's license conviction data, under rules established by FMCSA, to disqualify any Mexican Federal CDL holder, as warranted, from operating in the United States.⁸ FMCSA has asked states to report the following categories of convictions to the MCDB.

- Traffic convictions of Mexican Federal CDL holders operating commercial and non-commercial vehicles and
- Traffic convictions in a commercial vehicle when the driver used a Mexican personal or Mexican state-issued CDL.

Our current work found that states were not consistently reporting the categories of traffic convictions that FMCSA requested. For example, New Mexico had not reported non-commercial vehicle traffic convictions in CY 2007 or for most of CY 2008. Conversely, other southern border states reported such convictions. Furthermore, although not a definitive indication of reporting inconsistencies since states may not have traffic convictions to report, 25 non-southern border states did

⁸ Serious and disqualifying offenses include driving under the influence of alcohol or drugs and serious traffic offenses include multiple excess speeding violations or reckless driving.

not report a Mexican traffic conviction for CY 2007 and most of CY 2008. In contrast, the remaining 21 non-southern border states reported at least one Mexican traffic conviction. Even Hawaii, a non-continental state, reported 21 convictions—the second largest number of Mexican traffic convictions for a non-southern border state in CY 2008.

We also found that states are reporting a third category of traffic convictions, Mexican personal or Mexican state-issued CDL traffic convictions in a non-commercial vehicle, to the MCDB. According to FMCSA, states are encouraged to report these convictions at the states' discretion. For example, Missouri officials informed us that 428 non-commercial vehicle convictions reported in CYs 2007 also include Mexican personal driver's license convictions while operating their personal vehicle. However, all of the states are not reporting such information. Table 2 on the next page shows the number of MCDB Mexican driver's license convictions by vehicle type for CYs 2007 and 2008.

One reason for these inconsistencies in state reporting stems from the fact that current Federal laws and regulations for the CDL program do not require states to report convictions of Mexican Federal CDL holders to the MCDB. However, the lack of consistent conviction data increases the possibility that Mexican Federal CDL holders that should have been disqualified could continue to drive in the United States. Similarly, a related vulnerability has to do with the current monitoring procedures that make it difficult to account for the possibility that Mexican Federal CDL holders operating in the United States could also legally hold another Mexican-issued driver's license. Because of this vulnerability, FMCSA could not readily identify traffic convictions needed to disqualify Mexican Federal CDL holders. Consequently, these Mexican drivers could incur convictions under other driver's licenses that may not be reported to the MCDB.

Furthermore, even if states report the convictions, FMCSA may not readily match them to a Mexican Federal CDL holder because the matching is carried out manually. As a result, the manual process is likely more susceptible to errors when different types of licensing data are present, and matching convictions to the CDL holders could become delayed if the number of non-Federal CDL convictions reported were to increase. In contrast, United States CDL holders can have only one license that covers the operation of both commercial and non-commercial vehicles throughout the United States, making it more likely to detect a traffic conviction.

Table 2. MCDB Mexican Driver's License Convictions by Vehicle Type (CYs 2007 and 2008)

MCDB Mexican Driver's License Convictions Reported by State	Commercial Vehicle		Non-Commercial Vehicle	
	CY 2007	CY 2008 (January-September)	CY 2007	CY 2008 (January-September)
<i>Southern Border States:</i>				
– Texas	2,254	1,931	339	606
– California	51	278	21	99
– New Mexico	120	200	0	0
– Arizona	94	39	135	27
<i>Non-Southern Border States:</i>				
• Non-southern border states with a large number of convictions in a year:				
– Missouri	5	1	428	313
– Hawaii	0	0	0	21
• Remaining non-southern border states with a small number of convictions in a year:*				
– 8 states reported both vehicle types	17	11	9	19
– 7 states reported commercial only	8	18	0	0
– 4 states reported non-commercial only	0	0	1	4
– 25 states reported no convictions	0	0	0	0
Total Convictions Reported:	2,549	2,478	933	1,089
Source: OIG analysis of FMCSA's Mexican Conviction Database data.				
*The remaining 44 non-border states accounted for 1.2 percent of all convictions reported in the period; 87 of the 7,049 convictions in both years for all vehicle types.				

Inadequate Bus Inspection Capacity Exists at Some Southern Border Crossings

Under section 350(c) criteria, FMCSA must have adequate capacity at southern border crossings to conduct a sufficient number of meaningful vehicle safety inspections. To meet the criteria for Mexican commercial buses operating in the United States, FMCSA developed a Bus Inspection Plan that details, on a site-specific basis, its plan to perform bus inspections at commercial and non-commercial border crossings.

Our current work found a lack of daily inspections at non-commercial border crossings. For example, we observed that bus inspection operations at four non-commercial border crossings at Calexico and San Ysidro, California, and at Laredo and McAllen-Hidalgo Bridge, Texas, did not include a daily inspection presence. We also found that FMCSA had not followed through on its promised action to add to its Bus Inspection Plan holiday and weekend bus inspection coverage at Laredo, Texas. Instead FMCSA provided the inspection coverage requirement to its staff in an email, which the staff stated it used as a basis for

carrying out its inspections. In addition to constraints on when inspections could be performed, constraints on efficient and safety inspection space also existed. In our opinion, these constraints lessen the impact that inspections can have on deterring the entry of unsafe buses into the United States.

FMCSA's Bus Inspection Plan Does Not Provide Adequate Capacity

Our review found that FMCSA needed to improve its capacity to adequately perform bus inspections. First, its Bus Inspection Plan did not include the frequency at which bus inspections should be performed at a crossing. FMCSA and CBP personnel we interviewed confirmed that the Bus Inspection Plan denotes a day and time period when inspections occur, but does not note the frequency of the inspections. Consequently, significant time may elapse between bus inspections.

Second, the Bus Inspection Plan limits inspections at some crossings to specific hours that the crossings are open, designating a day and time, usually a weekday, when inspections may occur. According to an FMCSA inspector, the Bus Inspection Plan excluded evening inspections at some crossings due to the lack of appropriate lighting. Furthermore, the Bus Inspection Plan does not include alternative solutions such as portable lighting.

Although our review did not identify specific instances of unsafe bus crossings, we found evidence that the frequency of bus inspections, and thus the deterrent value, may decrease if the border is open to additional long-haul operations. At California and Texas border crossings, FMCSA personnel stated that after the Demonstration Project started, they no longer routinely performed bus inspections as frequently as in the past because inspectors had been diverted to inspect Demonstration Project trucks.

Our comparative analysis of inspection data for the year before the Demonstration Project began to the first year of the project corroborated FMCSA's statements. We found that FMCSA bus inspections decreased by over 32 percent (6,505 inspections), which corresponds with the increase in Demonstration Project truck inspections that occurred (7,394 inspections). We also noted decreases in inspections at most crossings. At El Paso, Texas, with a large volume of bus crossings, bus inspections decreased by about 80 percent—the largest decrease of all locations—from 5,143 inspections performed in the year before the Demonstration Project to 1,021 inspections during the first year of the project.

Finally, the shift in FMCSA border staff to meet the requirements for truck inspections under the Demonstration Project call into question whether FMCSA's border staff could meet the bus inspection demands that may occur if the border were to open to a large number of Mexican long-haul trucks and buses. During its first year, the Demonstration Project had less than 30 Mexican carriers and

118 trucks participating; but future demands, such as the need for FMCSA to meet the section 350(a) prerequisite⁹ to inspect 50 percent of the driver's licenses of all Mexican truck and bus drivers crossing the border, may create a far greater demand as staff is required to inspect more vehicles than the number that participated in the Demonstration Project.

Space Is Inadequate To Perform Efficient and Safe Bus Inspections

FMCSA did not have permanent facilities to perform bus inspections at any of the five locations we visited, through which pass over 80 percent of bus crossings at the southern border. For the San Ysidro, Laredo, and McAllen-Hidalgo crossings, the space CBP provided FMCSA for bus inspections were located on the roadway shoulder immediately after the CBP primary inspection booth. The inspection space for Calexico was located on a small access way to the CBP inspection booth and the Otay Mesa space was located on a circular roadway at the public entrance to the CBP immigration building.

The space CBP provided to perform inspections at four of the five crossings may limit the number of inspections FMCSA realistically can perform. According to FMCSA officials at the Calexico, Otay Mesa, and San Ysidro crossings, inspectors do not have adequate space to set up the full set of four ramps needed to efficiently inspect the underside of a bus. Instead, inspectors can set up only two of the four ramps needed to inspect a bus from bumper to bumper and must maneuver the bus to make use of the two ramps, which requires additional time. According to FMCSA officials at the McAllen-Hidalgo crossing, CBP does not allow ramp inspections because it may disrupt traffic. Further, FMCSA officials at the Calexico and Otay Mesa crossings informed us of instances where bus inspections were not performed to accommodate CBP's use of the space.

Additionally, the close proximity of inspection space to moving traffic may deter inspectors from performing certain types of bus inspections. At two locations, Laredo and San Ysidro, we observed FMCSA officials performing inspections on the shoulder of the road within inches of moving passenger buses—without a separation barrier. Further, an FMCSA official at one crossing stated that level 1 inspections, which include an inspection of the underside of the bus, are not always performed because it is “too dangerous” to inspect the underside of the bus so close to oncoming traffic. Figure 1 illustrates our observation of an FMCSA bus inspection area to oncoming bus traffic and portable inspection ramps at the San Ysidro, California, border crossing.

⁹ Section 350(a) of the FY 2002 Act, and subsequent appropriations, contain a number of preconditions FMCSA must meet before it can review or process Mexican motor carrier applications to operate as a long-haul carrier beyond the municipal and commercial zones at the southern border. This includes requiring on-site safety examinations of motor carriers in Mexico, in some instances.

Figure 1. FMCSA Bus Inspection Area San Ysidro, California



Source: OIG

At the border crossings in Laredo and Hidalgo, Texas, we found near identical inspection safety conditions and noted a potential bus passenger safety issue. At these crossings, bus passenger waiting areas are situated within inches of moving buses and there are no separation barriers from moving traffic.

CONCLUSION

FMCSA has continually taken actions to address our recommendations for improvements in the border safety program. While FMCSA's actions are noteworthy, additional focus to promote comprehensive traffic conviction data and adequacy of bus inspections will further advance the safety goals of the program. FMCSA should consider this information as it moves forward, as directed by the President, in working with the United States Trade Representative, the Department of State, leaders in Congress and Mexican officials to propose legislation creating a new cross-border trucking project that will meet the concerns of Congress and NAFTA commitments.

RECOMMENDATIONS

We recommend that the FMCSA Acting Deputy Administrator:

1. Improve the monitoring of Mexican Federal CDL holders operating in the United States by:
 - a. Developing and implementing a timely report that identifies state data inconsistencies in the MCDB, and assigning in the MCDB data quality control plan the responsibilities to address and follow up on data inconsistencies.
 - b. Assessing whether legislative, regulatory, or MCDB system changes are needed to ensure the consistent reporting and matching of different categories of traffic convictions, including convictions in non-commercial vehicles and convictions occurring under various types of Mexican-issued licenses.
 - c. Developing an action plan for implementing identified changes in the monitoring process, based on assessment results.
2. Improve the capacity to perform bus inspections at United States-Mexico border bus crossings by:
 - a. Adding to its Southern Border Bus Inspection Plan the frequency of required bus inspections at non-commercial crossings and inspections during any hour the border crossing is opened, to include evening and weekend hours. Include in the plan actions to eliminate obstacles to achieving inspection coverage during all open periods.
 - b. Working with the Customs and Border Protection Service, and other agencies as appropriate, to assess the safety and efficiency of bus inspection locations and space at all non-commercial border crossings at the southern border.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

We provided FMCSA with our draft report on June 25, 2009, and received its response on August 11, 2009. FMCSA concurred with all five of the recommendations and provided appropriate planned actions and target completion dates. FMCSA also provided clarifying comments on its ability to conduct driver's license inspections, its use of safety performance data to screen Mexican motor carriers and drivers, and actions it took to address prior OIG

recommendations. We have incorporated the comments as appropriate. FMCSA's response is included in its entirety in the appendix to this report.

ACTIONS REQUIRED

We consider FMCSA's planned actions and target dates responsive pending their completion. We appreciate the courtesies and cooperation of FMCSA representatives during this audit. If you have any questions concerning this report, please call me at (202) 366-5630 or Kerry R. Barras, the Program Director, at (817) 978-3318.

#

EXHIBIT A. SECTION 350 REQUIREMENTS

With the signing of the North American Free Trade Agreement in December 1992, the United States and Mexico consented to cross-border trucking throughout both countries by January 1, 2000. However, in December 1995, the Secretary of Transportation indefinitely delayed implementation of NAFTA cross-border provisions, citing safety reasons. Section 350 of the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 2002 and subsequent appropriation legislation prohibit FMCSA from using Federal funds to review or process Mexico-domiciled motor carrier applications to operate beyond the United States commercial zones until certain preconditions and safety requirements are met. The full text of section 350(c) provisions, including the requirement for an annual review by our office, is summarized below.

The Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 2002, Section 350(c) and (d)

Section 350(c). No vehicles owned or leased by a Mexican motor carrier may be permitted to operate beyond United States municipalities and commercial zones under conditional or permanent operating authority granted by the Federal Motor Carrier Safety Administration until—

(1) the Department of Transportation Inspector General conducts a comprehensive review of border operations within 180 days of enactment to verify that—

(A) all new inspector positions funded under this Act have been filled and the inspectors have been fully trained;

(B) each inspector conducting on-site safety compliance reviews in Mexico consistent with the safety fitness evaluation procedures set forth in part 385 of title 49, Code of Federal Regulations, is fully trained as a safety specialist;

(C) the requirement of subparagraph (a)(2) has not been met by transferring experienced inspectors from other parts of the United States to the United States-Mexico border, undermining the level of inspection coverage and safety elsewhere in the United States;

(D) the Federal Motor Carrier Safety Administration has implemented a policy to ensure compliance with hours-of-service rules under part 395 of title 49, Code of Federal Regulations, by Mexican motor carriers seeking authority to operate beyond United

States municipalities and commercial zones on the United States-Mexico border;

(E) the information infrastructure of the Mexican government is sufficiently accurate, accessible, and integrated with that of United States enforcement authorities to allow United States authorities to verify the status and validity of licenses, vehicle registrations, operating authority and insurance of Mexican motor carriers while operating in the United States, and that adequate telecommunications links exist at all United States-Mexico border crossings used by Mexican motor carrier commercial vehicles, and in all mobile enforcement units operating adjacent to the border, to ensure that licenses, vehicle registrations, operating authority and insurance information can be easily and quickly verified at border crossings or by mobile enforcement units;

(F) there is adequate capacity at each United States-Mexico border crossing used by Mexican motor carrier commercial vehicles to conduct a sufficient number of meaningful vehicle safety inspections and to accommodate vehicles placed out of service as a result of said inspections;

(G) there is an accessible database containing sufficiently comprehensive data to allow safety monitoring of all Mexican motor carriers that apply for authority to operate commercial vehicles beyond United States municipalities and commercial zones on the United States-Mexico border and the drivers of those vehicles; and

(H) measures are in place to enable United States law enforcement authorities to ensure the effective enforcement and monitoring of license revocation and licensing procedures of Mexican motor carriers.

(2) The Secretary of Transportation certifies in writing in a manner addressing the Inspector General's findings in paragraphs (c)(1)(A) through (c)(1)(H) of this section that the opening of the border does not pose an unacceptable safety risk to the American public.

Section 350(d). The Department of Transportation Inspector General shall conduct another review using the criteria in (c)(1)(A) through (c)(1)(H) consistent with paragraph (c) of this section, 180 days after the first review is completed, and at least annually thereafter.

Exhibit A. Section 350 Requirements

EXHIBIT B. STATUS OF SECTION 350(C) CRITERIA AND INSPECTIONS AND OUT-OF-SERVICE RATES

This exhibit provides the status and results of our review of each section 350(c) criteria and our examination of yearly inspection and out-of-service rates.

Status of Section 350(c) Criteria

Staffing, Training, and Transfer Restrictions of Inspectors. FMCSA reported that 243 of 274, or nearly 90 percent, FMCSA enforcement personnel positions authorized at the United States-Mexico border were filled as of October 2008, and hiring efforts are ongoing.¹⁰ This represents a slight decrease from the 93 percent of filled positions reported in our August 2007 report. However, in our opinion, the decrease is still within an acceptable range to substantially meet section 350(c)(1)(A) staffing criteria based on the 274 authorized positions and continuing FMCSA recruitment efforts. In addition to the FMCSA enforcement personnel currently working at the southern border, 345 federally subsidized state inspectors are at United States-Mexico border crossings. Table 3 below shows a breakout of the FMCSA personnel and locations along the southern border.

Table 3. Location of FMCSA Personnel at the United States-Mexico Border

Enforcement Staff Position	Number of Staff in				Total
	Arizona	California	New Mexico	Texas	
Inspector	24	12	7	89	132
Auditor	6	6	0	26	38
Investigator	4	13	0	26	43
Supervisor	5	5	1	12	23
Support	1	2	0	4	7
Current Total	40	38	8	157	243
Last Reported*	44	44	7	159	254

Source: OIG analysis of October 2008 FMCSA Border Staff Roster.
*Last reported in our August 2007 report as of June 2006.

According to FMCSA officials, all enforcement personnel at the United States-Mexico border crossings, both Federal and state, have the proper training to meet

¹⁰ Section 350 referred to “inspectors,” but FMCSA categorized the positions as inspectors, auditors, and investigators responsible for providing a full range of safety enforcement functions. These enforcement actions include performing driver and vehicle safety inspections, safety audits, and compliance reviews and investigations. FMCSA established 274 positions as the target it needed to meet section 350 criteria.

section 350(c)(1)(A) inspection training criteria. Additionally, those personnel are trained as safety specialists to conduct on-site reviews of Mexican motor carriers to meet section 350(c)(1)(B) safety specialist training criteria. Because of the limited number of new hires since our last audit, we relied on the results of our past audit work, in which we confirmed that inspectors were attending training, analyzed training class rosters, tested answer sheets, and reviewed personnel data. Further, consistent with the non-transfer criteria of section 350(c)(1)(C), our analysis found that none of the enforcement personnel hired for the United States-Mexico border crossings were experienced FMCSA personnel transferred from other parts of the United States to fill these positions.

Hours-of-Service Policy. FMCSA meets the hours-of-service policy criteria of section 350(c)(1)(D). FMCSA has issued policy guidance requiring safety auditors to verify hours-of-service compliance for Mexican motor carriers seeking authority to operate outside municipal and commercial zones. At the border crossings reviewed, we found that FMCSA conducted inspections as required in accordance with Commercial Vehicle Safety Alliance (CVSA) inspection criteria, which include reviewing drivers' hours-of-service records.

Information and Telecommunications. At the border crossings reviewed, FMCSA continues to provide an integrated information infrastructure and telecommunications links in-place and sufficiently accessible to inspectors to meet section 350(c)(1)(E). The sites had Internet access, telephone service and use of linked wireless hand-held electronic devices, such as Personal Digital Assistants. FMCSA personnel at Laredo, Texas, did however comment that the sole dial-up computer line Internet connection at the border crossing was slow, often disconnects when rain or high humidity is present, and also doubles as the locations fax line. Because of the connection issues, personnel used their cellular phones as a back-up. We plan to follow up on these issues in future reports.

Capacity to Conduct Meaningful Inspections at the Southern Border. According to FMCSA, there are 25 United States-Mexico border commercial crossings accommodating Mexican truck and bus traffic and 7 non-commercial crossings that only accommodate bus traffic. These crossings are comprised of FMCSA and state inspection sites along the southern border that are either fully staffed or contain equipped inspection facilities that can be staffed when needed.¹¹ During our audit, we reviewed 11 truck inspection crossings and 5 bus inspection crossings and found that FMCSA continues to have the capacity to conduct meaningful truck and driver inspections at the southern border, by providing staff, equipment, and inspection facilities to substantially meet section 350(c)(1)(F) criteria. However, as discussed in the findings section of this report, FMCSA

¹¹ According to FMCSA, the commercial volume at some crossings was not sufficient to merit full-time inspection coverage or dedicated inspection facilities. Inspectors are available "on-call" to provide coverage.

needs to improve on its capacity to adequately perform bus inspections at non-commercial bus crossings at the southern border.

Sufficiently Comprehensive Data for Monitoring Motor Carriers and Drivers. Three data systems were established to substantially meet section 350(c)(1)(G) criteria, which calls for an accessible database containing sufficiently comprehensive data for monitoring all Mexican motor carriers and their drivers that apply for authority to operate beyond the municipal and commercial zones on the United States-Mexico border. The first system, the FMCSA MCDB (formerly the 52nd State System), contains Mexican traffic convictions occurring in the United States as reported by the states. The second system, the Government of Mexico LIFIS contains Mexican records showing valid, disqualified, or expired Mexican motor carrier CDLs as reported by the Government of Mexico.¹² The third system, FMCSA MCMIS Mexican Monitoring sub-system is intended to identify Mexican carriers that require compliance reviews for specific violations, generate letters on corrective actions, and create a history of violations and corrective dates.

Our current work examined FMCSA's proposed actions in response to our August 2007 report and found that FMCSA continued to improve the comprehensiveness and consistency of MCDB conviction data by working with southern border states on corrective action plans for data reporting problems, and developed a process to quarterly identify and notify states of data inconsistencies. We found that FMCSA's implemented actions differed slightly from those it promised and some data inconsistencies still existed. These issues were discussed in the findings of this report.

Effective Enforcement. FMCSA has implemented actions that meet section 350(c)(1)(H) criteria to have measures in place for ensuring "effective enforcement" of Mexican motor carriers. In our August 2007 report, we reported that California was moving to adopt the FMCSA's August 2002 interim final rule on enforcing operating authority, which would require states to place Mexican motor carrier vehicles out of service for violations of specific Federal motor carrier regulations.¹³ According to FMCSA, California still has not adopted the rule, but continues to use an equivalent rule. Instead of putting a violator out of service, California can either fine the violator \$1,000 or order the violator to return the vehicle to the country of origin. In addition to assessing a fine against violators, California may also impound the vehicle and its cargo until the fine and

¹² Although FMCSA asserted that LIFIS data are now comprehensive, our ability to test the comprehensiveness of LIFIS information was limited because LIFIS is under the control of the Government of Mexico. We conducted audit work for our June 2002 report that validated the accuracy of information in LIFIS by tracing information in the system back to source documents.

¹³ The final rule was issued on August 28, 2006 (71 FR 50862).

impoundment charges are paid. FMCSA stated that it considers California's requirement that the vehicle be impounded to be compatible with its rule.

Further, following the issuance of our August 2007 report, FMCSA issued and implemented new guidance in response to the NAFTA Demonstration Project. Some of these policies, such as that regarding the English proficiency of Mexican drivers in the United States, apply to Mexican drivers outside of the Demonstration Project. We reviewed the implementation of these policies as part of our audits of the NAFTA Demonstration Project and found that FMCSA has taken proposed actions to ensure the policies were disseminated to state and local officials.

Inspections and Out-of-Service Rates

To provide an indication as to how well FMCSA is implementing criteria under the FY 2002 Act, we analyzed FMCSA and state inspection data of Mexican carriers and drivers currently operating in the United States; mainly at the United States-Mexico commercial zones on the southern border. We compared FY 2008 to prior years in (1) the number of Mexican commercial driver and vehicle inspections occurring in the United States by FMCSA and state personnel and (2) the rate (percentage) Mexican carrier vehicles and drivers are taken out of service for a safety violation, which precludes further operation of a commercial vehicle by its driver—until either a specified period elapses or a required condition is met. We also compared FY 2008 Mexican vehicle out-of-service rate to the out-of-service rate incurred by United States vehicles.

When we initially began reporting on Mexican cross-border trucking, we reported that in 1997 FMCSA had only 13 Federal inspectors at the southern border. The inspections occurring from the small number of inspectors at that time had resulted in 56 percent of Mexican inspected vehicles passing the safety inspection and 44 percent being removed from service because of safety violations.

In comparison to 1997, in FY 2008 the number of personnel inspecting Mexican vehicles and drivers is much greater and the ratio of Mexican trucks passing versus failing inspections is greater. In FY 2008, FMCSA and the states had 588 enforcement personnel at the border, including 243 Federal personnel. In addition, 78.8 percent of Mexican vehicles passed the safety inspection and 21.2 percent were removed from service because of safety violations. The 21.2 percent Mexican truck out-of-service rate is comparable to United States trucks at 21.8 percent. As shown in table 4 on the following page, there also was a slight increase in the number of inspections performed—from 215,140 in FY 2007 to 220,405 in FY 2008.

Exhibit B. Status of Section 350(c) Criteria and Inspections and Out-of-Service Rates

Table 4. United States, Mexico, and Central America Commercial Vehicle and Driver Inspections and Out-of-Service Rates in the United States (FY 2006 through FY 2008)

United States Inspections Performed—Carrier Domicile, Fiscal Year, and Out-of-Service Rates		Number of Inspections	Carriers Inspected	Average Inspection Per Carrier	Vehicles Placed Out of Service for Safety or Regulation Violation (Percent) ^a	Drivers Placed Out of Service for License Violation (Percent) ^b
United States	2008	2,762,525	348,410	8	21.8%	6.9%
	2007	2,655,012	337,835	8	21.7%	7.2%
	2006	2,554,280	314,486	8	22.3%	7.3%
Mexico	2008	220,405	4,335	51	21.2%	1.2%
	2007	215,140	4,520	48	21.6%	1.0%
	2006	211,106	4,617	46	20.9%	1.2%
Central America ^c	2008	878	134	7	38.4%	63.2%
	2007	775	91	9	33.6%	49.4%
	2006	491	54	9	42.7%	29.3%

Source: OIG analysis of FMCSA's Motor Carrier Management Information System data.

^a The out-of-service rate (percentage) for vehicles resulted from a CVSA North American Level I—walk-around, underside, and driver inspection; Level II—walk-around and driver inspection; and Level V—inspection only.

^b The out-of-service rate (percentage) for drivers resulted from CVSA North American Levels I and II inspections and a Level III—driver only inspection.

^c Our analysis noted United States inspections of Central American motor carriers. FMCSA's December 2008 interim final rule (73 FR 76472, December 16, 2008) established a new application process and safety monitoring system for non-North American-domiciled motor carriers, including Central American motor carriers.

EXHIBIT C. OTHER ISSUES

This exhibit provides results of our review of the two issues we made recommendations for in our August 2007 report not specific to section 350(c). The exhibit also provides information on two issues we identified in our September 2007 report¹⁴ on the NAFTA Demonstration Project, which are pertinent to Mexican long-haul operations in the United States.

Review of August 2007 Report Issues Not Specific to Section 350(c)

In our August 2007 report we recommended that FMCSA implement a policy on the use of vehicle model year to indicate Mexican vehicle compliance with FMVSS and record vehicle identification numbers as part of a safety inspection. Our current review found that the policy is still needed. Additionally, we reported that FMCSA should establish an action plan, in coordination with other Department of Transportation offices, to address concerns regarding drug and alcohol testing of all Mexican commercial drivers. FMCSA completed its proposed actions and audited several Mexican specimen collection facilities, but should continue to monitor Mexico's efforts in this area.

FMCSA Policy Guidance Is Still Needed To Implement the Use of Vehicle Identification Numbers in Vehicle Safety Inspections

In March 2002, FMCSA issued a proposed rule that would require each Mexican commercial motor vehicle operating in interstate commerce in the United States to display a certification label asserting that the vehicle complied with FMVSS, as applicable, when it was built. FMCSA then withdrew this proposed rule in August 2005, after determining that it could ensure Mexico motor carriers' compliance with the standards while operating in the United States by enforcing the already established Federal Motor Carrier Safety Regulations and other policies, because many of the safety regulations are cross-referenced to the FMVSS.

Along with the withdrawal of the proposed rule, FMCSA issued policy guidance entitled "*Enforcement of Motor Carriers' Self-Certification of Compliance with the Motor Vehicle Safety Standard*" in August 2005, to FMCSA and state inspectors stating that enforcement officials "should defer to" the vehicle identification number, which identifies the vehicle's model year, to determine whether a vehicle without a certification label complies with applicable

¹⁴ OIG Report Number MH-2007-065, "*Issues Pertaining to the Proposed NAFTA Cross-Border Trucking Demonstration Project*," September 6, 2007.

manufacturing standards.¹⁵ The August 2005 memorandum also stated that further guidance would be forthcoming to implement the policy. Our August 2007 report recommended that FMCSA issue implementation guidance as stated in the policy. In September 2007, FMCSA issued guidance on the use of software for checking vehicle identification numbers. FMCSA also proposed inspection system software to prompt inspectors to enter the vehicle identification number for vehicles inspected.

Our review found that FMCSA had revised its inspection software as promised and it was in use during FMCSA inspections. However, the September 2007 guidance stated that it was in use for the Demonstration Project. Since the policy is not applicable to all potential Mexican long-haul vehicles, our recommendation to issue the implementation guidance from our August 2007 report remains open. Furthermore, we plan to review FMCSA's use of the revised system prompt in future reports.

FMCSA Should Continue Monitoring Mexico's Commercial Driver Drug and Alcohol Testing Program

Our August 2007 report noted that a significant issue with Mexico's specimen collection remains, because it was not clear whether the controls in place ensure valid specimens are collected in Mexico before being sent to a certified laboratory.¹⁶ In response, FMCSA agreed to establish an action plan, in coordination with the United States Department of Transportation's Office of Drug and Alcohol Policy Compliance, to ensure Mexico's drug and alcohol collection issues are adequately addressed. Additionally, FMCSA stated that it would conduct audits of drug and alcohol collection facilities in Mexico and determine whether they meet United States standards. Our review found that FMCSA completed its promised actions. FMCSA has stated that it will continue to monitor this area and coordinate with the Office of Drug and Alcohol Policy Compliance. We plan to follow up on this area in future reports.

Demonstration Project Issues Not Specific to Section 350(c)

Our September 2007 initial audit of the Demonstration Project identified two areas that FMCSA should consider since they are relevant to Mexican long-haul operations in the United States. First, our report identified three instances where FMCSA varied slightly from requirements in section 350(a) of the FY 2002 Act.

¹⁵ The FMCSA guidance stated that if FMCSA or state inspectors can determine Mexican-domiciled motor carriers are operating vehicles that are not in compliance with FMVSS, FMCSA may use this information to deny, suspend, or revoke a carrier's operating authority for making a false certification or issue appropriate penalties. In its August 2005 withdrawal of the proposed rule, FMCSA determined that most trucks produced in Mexico beginning in model year 1996 have met applicable manufacturing standards.

¹⁶ In a 1998 memorandum of understanding between the Department and its Mexican counterpart, the Mexican authorities agreed to follow collection procedures equivalent to those used by the Department.

Exhibit C. Other Issues

Second, the report discussed information safety inspectors could use to make a safety assessment of Mexican carriers, such as vehicle inspections and accident reports, were not available during pre-authorization safety audit.

*Differences Noted in FMCSA's Implementation of Three FY 2002 Act
Section 350(a) Prerequisites*

Our September 2007 initial audit of the Demonstration Project identified 34 specific FY 2002 Act section 350(a) prerequisites for FMCSA to meet before it could process applications from Mexican carriers to operate beyond commercial zones. Of the 34 section 350(a) pre-requisites identified, FMCSA implemented policies or interim final rules that differ slightly from the language for 3 of the Section 350(a) provisions. FMCSA took quick action to account for these differences for the NAFTA Demonstration Project; but now that the demonstration project has been concluded, the differences are still relevant if the border were opened to Mexican long-haul operations. Our work noted the following differences.

- Section 350(a)(1)(B)(vi) requires a pre-authorization safety audit inspection of Mexican vehicles without an inspection decal, the FMCSA interim final rule limits such inspections to “available vehicles.” For the Demonstration Project, FMCSA reviewed all Mexican carrier vehicles that were proposed to participate in the project.
- FMCSA policy implementing the section 350(a)(3) requirement to electronically verify the status and validity of each Mexican commercial vehicle driver’s license crossing the border specifies license checks for only those drivers domiciled in Mexico. Strictly interpreted, the policy would not include Mexican commercial vehicle drivers who are domiciled outside of Mexico. For the Demonstration Project, FMCSA stated that it would inspect every project driver at the border, and would place out of service any driver operating without a valid Mexican Federal CDL.
- The 2002 rule defining safety rules relevant to Mexican motor carriers implementing section 350(a)(1)(B)(v) has not been updated to include part 380, which establishes minimum requirements for operators of longer combination vehicles and their instructors. The rule only specifies 49 C.F.R. parts 382 through 399, as applicable. For the Demonstration Project, FMCSA added to the operating authority authorization letter for the Mexican carrier participating in the project a restriction on operating long combination vehicles in the United States, which is the subject of part 380.

FMCSA should address all differences to ensure they meet section 350(a) criteria before processing applications from Mexican carriers to operate beyond commercial zones. We plan to follow up on this area in future reports.

Unavailable Carrier Data Available During Pre-authorization Safety Audits

In our September 2007 report, we reported that during an FMCSA on-site pre-authorization safety audit of a Demonstration Project applicant, information such as carrier vehicle and driver crashes in Mexico was not available to the safety auditor. FMCSA has stated that it is working with the government of Mexico to improve the availability of the information during the pre-authorization safety audit. We plan to follow up on this area in future reports.

EXHIBIT D. OBJECTIVE, SCOPE, AND METHODOLOGY

Our objective for this audit was to assess FMCSA's ongoing compliance with the section 350(c) safety criteria. We conducted this performance audit from June 2008 through June 2009, in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Because of our in-depth coverage of this area during previous audit work, we limited our testing of the eight section 350(c) criteria. Exhibit E lists our reports relating to NAFTA cross-border trucking. As part of our audit, we analyzed selected FMCSA data and documentation, such as border staff rosters and payroll; training reports; inspection reports and inspection data; policies and procedures; and other documentation and data. We also used results from our recent work performed in response to section 6901 of the United States Troop Readiness, Veteran's Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, covering the NAFTA Cross-Border Demonstration Project, to determine whether any findings or recommendations reported in those resulting reports also applied to Mexican long-haul operations, if authority is granted.

To further test FMCSA's implementation of the provisions of the eight section 350(c) criteria and to review its actions in response to our August 2007 report recommendations, we observed operations at southern border crossings—11 truck border crossings and 5 bus border crossings (see table 5 on the following page). For most truck border crossings visited, we relied on the technical assistance of our safety specialists with extensive law enforcement and vehicle inspection experience.

At each crossing, we observed the vehicle and driver inspections procedures, operations, and inspection-related facilities and equipment. Further, we interviewed officials from FMCSA, United States Customs and Border Protection, and the states, if necessary, to determine: (1) whether the conditions reported in 2007 remained the same, (2) the current roles and procedures used to permit Mexican motor carriers' entry into the United States, (3) the working relationships between border staff of the different agencies, (4) actions taken in response to our 2007 report recommendations, and (5) inspection procedures and certifications.

Table 5. Truck and Bus Border Crossings that OIG Observed

Truck Border Crossings	Bus Border Crossings
Bridge of the Americas, El Paso, TX	Calexico, CA
Calexico East, Calexico, CA	Juarez-Lincoln Bridge, Laredo, TX
Columbia Solidarity Bridge III, Laredo, TX	McAllen–Hidalgo Bridge, Hidalgo, TX
Camargo Bridge, Rio Grande City, TX	Otay Mesa, CA
Eagle Pass, TX	San Ysidro, CA
Otay Mesa, CA	
San Luis, AZ	
Santa Teresa, NM	
Tecate, CA	
World Trade Bridge, Laredo, TX	
Ysleta-Zaragoza Bridge, El Paso, TX	

We analyzed MCDB reported data and documentation provided by FMCSA for inconsistencies and to assess FMCSA’s recently implemented MCDB data quality control plan. In addition, we interviewed state officials responsible for MCDB in Arizona, California, Missouri, New Mexico, and Texas and TML Information Services, Inc. the contractor responsible for the database. We contacted these officials to determine whether actions included in state action plans were completed and data inconsistencies FMCSA found as part of the quality control plan were subsequently corrected. Furthermore, we accompanied the Department’s representatives to Mexican drug and alcohol specimen collection sites, reviewed the resulting reports, and interviewed Mexican officials at these sites.

We independently obtained data from FMCSA’s MCMIS data to make comparisons and assess FMCSA’s continued improvement in implementing section 350(c). Our independent analysis determined the number of driver, truck, and bus inspections conducted and computed the vehicle and driver out-of-service rates for the United States, Mexico, and Central America for FYs 2006 through 2008. We compared these rates in our August 2007 report and to periods before and after the start of the Demonstration Project. We performed a limited assessment of the general and application controls for MCMIS. For the other systems we used, such as the MCDB, we selectively analyzed data to test for completeness.

EXHIBIT E. PRIOR NAFTA CROSS-BORDER AUDIT COVERAGE

The following is a list of prior reports issued on NAFTA.

- OIG Report Number MH-2009-034, “Final Report on NAFTA Cross-Border Trucking Demonstration Project,” February 6, 2009.
- OIG Report Number MH-2008-040, “Interim Report on NAFTA Cross-Border Trucking Demonstration Project,” March 10, 2008.
- OIG Report Number MH-2007-065, “Issues Pertaining to the Proposed NAFTA Cross-Border Trucking Demonstration Project,” September 6, 2007.
- OIG Report Number MH-2007-062, “Follow-Up Audit of the Implementation of the North American Free Trade Agreement’s Cross-Border Trucking Provisions,” August 6, 2007.
- OIG Report Number MH-2005-032, “Follow-up Audit of the Implementation of the North American Free Trade Agreement’s (NAFTA) Cross-Border Trucking Provisions,” January 3, 2005.
- OIG Report Number MH-2003-041, “Follow-up Audit on the Implementation of Commercial Vehicle Safety Requirements at the United States-Mexico Border,” May 16, 2003.
- OIG Report Number MH-2002-094, “Implementation of Commercial Vehicle Safety Requirements at the United States-Mexico Border,” June 25, 2002.
- OIG Report Number MH-2001-096, “Motor Carrier Safety at the United States-Mexico Border,” September 21, 2001.
- OIG Report Number MH-2001-059, “Status of Implementing the North American Free Trade Agreement’s Cross-Border Trucking Provisions,” May 8, 2001.
- OIG Report Number TR-2000-013, “Mexico-Domiciled Motor Carriers,” November 4, 1999.
- OIG Report Number TR-1999-034, “Motor Carrier Safety Program for Commercial Trucks at United States Borders,” December 28, 1998.

EXHIBIT F. MAJOR CONTRIBUTORS TO THIS REPORT

<u>Name</u>	<u>Title</u>
Kerry R. Barras	Program Director
David Pouliott	Program Manager
Pat Conley	Senior Auditor
Tony Saraco	Senior Auditor
Michael Masoudian	Analyst
Calvin Moore	Analyst
Anette Soto	Analyst
Scott Williams	Analyst
Harriet Lambert	Writer-Editor

APPENDIX. MANAGEMENT COMMENTS



U.S. Department
Of Transportation

**Federal Motor Carrier
Safety Administration**

Memorandum

Subject: **INFORMATION:** Response to the OIG Draft Report
“Follow-Up Audit of Implementation of the NAFTA Cross-Border Trucking Provisions” O8M3009M000

Date: AUG 11 2009

From: 
Rose A. McMurray
Acting Deputy Administrator

Reply to Attn: of MC-E

To: Joseph W. Comé
Assistant Inspector General
for Highway, Transit, Rail, and Maritime Audits

The Federal Motor Carrier Safety Administration (FMCSA) appreciates the opportunity to review the Office of Inspector General (OIG) draft report titled, “Follow-up Audit on the Implementation of the North American Free Trade Agreement’s Cross-Border Trucking Provisions.”

FMCSA Conducts Vigorous Enforcement Program for Mexican Vehicles and Drivers

The FMCSA maintains a vigorous oversight program for Mexican drivers. In Fiscal Year (FY) 2008, the FMCSA conducted 223,564 driver inspections on Mexican drivers. The FMCSA is confident that the 485 available Federal and State commercial motor vehicle inspectors can continue to achieve the statutorily required driver’s license inspection level for Mexican drivers who operate beyond the commercial zones and the Agency will continue to ensure that the border is adequately staffed. The FMCSA has a history of staffing the border at the levels necessary to achieve its enforcement goals, and it is therefore not clear why the draft report expresses concern regarding the Agency’s ability to inspect 50 percent of the drivers’ licenses of Mexican truck and bus drivers crossing the border, if the border were to open to a large number of Mexican long-haul trucks and buses. For example, during the recently discontinued Demonstration Project, FMCSA staff inspected nearly 100 percent of the drivers’ licenses of the Demonstration Project drivers. The FMCSA will continue to staff the border in the manner necessary to achieve enforcement goals.

The FMCSA evaluates the safety performance of Mexican drivers in a manner identical to United States (U.S.) and Canadian drivers. Disqualifying violations reported on Mexican and Canadian drivers are the same as those that are required to be reported for U.S. drivers. Violations such as

Appendix. Management Comments

the absence of operating authority are not considered disqualifying offenses for individual driver licensing purposes, and are, therefore, not required to be posted on the driver's license record or the Mexican Convictions Data Base (MCDB). They are, however, included in the FMCSA's Motor Carrier Management Information System (MCMIS). As a result, it is inaccurate for the OIG report to maintain that violations attributable to motor carriers, such as any relating to operating a vehicle without operating authority or required shipping documents, should be included in the MCDB.

Finally, FMCSA conducted 2,094 inspections on Mexican motor carriers of passengers during FY 2008. As the ports of entry along the United States-Mexico border were not originally designed to accomplish motor coach/bus inspections, FMCSA will continue to work with the U.S. Customs and Border Protection (CBP) and the General Services Administration (GSA) to address issues related to gaining additional space at the ports of entry for effective bus inspections and safe operations.

Safety Performance Data Demonstrates Progress

The safety performance data gathered by FMCSA during the Pre-Authorization Safety Audits conducted during the recently discontinued Demonstration Project proved effective in screening out unsafe motor carriers. As mentioned in the Demonstration Project's independent evaluation panel in its October 2008 report, the Mexican motor carriers that participated in the project had a driver out-of-service rate of 0.5 percent and a vehicle out-of-service rate of 7.2 percent during the first year of the project. As a comparison, the panel noted that U.S. motor carriers had driver and vehicle out-of-service rates of 7.2 percent and 22.6 percent respectively during FY 2007.

The FMCSA recognizes the necessity for complete, timely, accurate and consistent data reporting. For this reason, on December 11, 2008, FMCSA entered into a Memorandum of Understanding with Mexico's Dirección General del Autotransporte Federal, which will, in part, provide for the exchange of safety related data and expertise for the improvement of both countries' motor carrier information systems. The FMCSA will continue to work with the Dirección General del Autotransporte Federal on the implementation of motor carrier safety data exchange.

The other data system referenced in the OIG draft report, the MCDB, is not statutorily required and the States are not required to report convictions of Mexican Federal commercial driver's license (CDL) holders to the MCDB. As a result, while the data provides potentially useful information to program managers, trends in the MCDB are not necessarily indicative of the quality or uniformity of enforcement actions. Therefore, FMCSA cautions against drawing conclusions relating to enforcement on the border based on trends in this data. In light of existing limitations with the MCDB data, FMCSA has ongoing efforts to enhance data quality for the MCDB. While FMCSA's quality control plan has already improved reporting of traffic convictions by the States' to the MCDB, FMCSA is pursuing further improvements to evaluate traffic conviction reporting trends and data reporting inconsistencies.

Actions Completed on Prior OIG Recommendations

The FMCSA completed action on previous OIG recommendations that have contributed to improved safety at the border. Specifically, FMCSA implemented new policies and procedures at the beginning of the recently discontinued Demonstrations Project that addressed issues from the OIG's September 2007 report, regarding Level 1 inspections of Mexican commercial motor vehicles, electronic verification of all licenses presented when Mexican drivers cross the border,

Appendix. Management Comments

and minimum requirements for operators of longer combination vehicles. These policies and procedures will carry forward to future oversight programs developed to implement the cross-border provisions of the North American Free Trade Agreement and satisfy the implementation criteria found in Section 350(a) of the FY 2002 Appropriations Act.

RECOMMENDATIONS AND RESPONSES

RECOMMENDATION 1a: Improve the monitoring of Mexican Federal CDL holders operating in the United States by developing and implementing a timely report that identifies state data inconsistencies in the MCDB, and assigning in the MCDB data quality control plan the responsibilities to address and follow up on data inconsistencies.

RESPONSE: *CONCUR. The FMCSA will revise its MCDB Data Quality Control Plan to address the inconsistency of conviction reporting by the States, and to establish responsibilities for addressing noted data issues. The FMCSA anticipates completion of this task by December 2009. To validate the effort of the States, and further identify improvements in each State's program, FMCSA is incorporating a review of the States' driver conviction reporting protocol into the CDL compliance reviews being conducted by FMCSA. The FMCSA anticipates completion of this task by September 2010.*

RECOMMENDATION 1b: Improve the monitoring of Mexican Federal CDL holders operating in the United States by assessing whether legislative, regulatory, or MCDB system changes are needed to ensure the consistent reporting and matching of different categories of traffic convictions, including convictions in non-commercial vehicles and convictions occurring under various types of Mexican-issued licenses.

RESPONSE: *CONCUR. The FMCSA's Office of Enforcement and Compliance will issue a report to the FMCSA Administrator outlining any changes required to ensure the consistent reporting and matching of traffic convictions occurring on Mexican driver's licenses. The FMCSA anticipates completion of this task by December 2009. The FMCSA will evaluate and determine the programming changes needed to address matching requirements and anticipates completion of this task by September 2010.*

RECOMMENDATION 1c: Improve the monitoring of Mexican Federal CDL holders operating in the United States by developing an action plan for implementing identified changes in the monitoring process, based on assessment results.

RESPONSE: *CONCUR. The FMCSA will develop an action plan for implementing identified changes in the monitoring process based on the assessment results. The FMCSA anticipates completion of this task by December 2009.*

RECOMMENDATION 2a: Improve the capacity to perform bus inspections at United States-Mexico border bus crossings by adding to its Southern Border Bus Inspection Plan the frequency of required bus inspections at non-commercial crossings and inspections during any hour the border crossing is opened, to include evening and weekend hours. Include in the plan actions to eliminate obstacles to achieving inspection coverage during all open periods.

RESPONSE: *CONCUR. The FMCSA will revise its Southern Border Inspection Plan to include the frequency of required bus inspections at non-commercial crossings, inspections during any hour the border crossing is open, and actions to eliminate obstacles to achieving inspection*

Appendix. Management Comments

coverage during all open periods. The FMCSA anticipates completion of this task by October 2009.

RECOMMENDATION 2b: Improve the capacity to perform bus inspections at United States-Mexico border bus crossings by working with Customs and Border Protection Service, and other agencies as appropriate, to assess the safety and efficiency of bus inspection locations and space at all non-commercial border crossings at the southern border.

RESPONSE: *CONCUR. The FMCSA will work with CBP and GSA to assess the safety and efficiency of bus inspection locations and space at all non-commercial border crossings and pursue additional accommodations as appropriate. The FMCSA anticipates the assessment will be completed by September 2010. The FMCSA anticipates that any needs identified by this assessment will require additional resources. Further compliance with this recommendation may be dependent upon these resources.*

The FMCSA appreciates the OIG's efforts, which assist FMCSA in fulfilling its transportation safety goals. If you need additional information or clarification, please do not hesitate to contact me, or William Quade, Associate Administrator, Office of Enforcement and Program Delivery, 202-366-4553.

The following pages contain textual versions of the charts and figures found in this document. These pages were not in the original document but have been added here to accommodate assistive technology.

**Report on Follow-Up Audit of Implementation of the North American Free
Trade Agreement's Cross-Border Trucking Provisions
Federal Motor Carrier Safety Administration**

Section 508 Compliant Presentation

Table 1. FMCSA's Actions to Implement Section 350(c) Criteria

This table demonstrates the eight section 350(c) criteria and the actions FMCSA has taken to meet those requirements as of August 2007. Source is the OIG.

- Criteria 1- Hiring and training border inspectors. FMCSA met the criteria as on-board staff is near authorized strength and has been trained.
- Criteria 2- Training inspectors conducting on-site reviews as safety specialists. FMCSA met the criteria as training was completed.
- Criteria 3- Not transferring inspectors to fill positions. FMCSA met the criteria as no transfers were identified.
- Criteria 4- Implementing an hours of service policy. FMCSA met the criteria as policy has been implemented.
- Criteria 5- Having a sufficiently accurate, accessible, and integrated information infrastructure and adequate telecommunications links. FMCSA met the criteria.
- Criteria 6- Having adequate capacity at southern border to conduct meaningful inspections. FMCSA substantially met the criteria. The capacity to perform truck, bus, and driver inspections are in place, but FMCSA needed to include bus inspections during peak hours, such as holiday periods, at Laredo, Texas.
- Criteria 7- Having sufficient databases to allow safety monitoring of Mexican carriers and drivers. FMCSA substantially met the criteria. Databases are in place, but FMCSA needed to improve the consistency of Mexican traffic conviction reporting to the Mexican Conviction Database, formerly the 52nd State System.
- Criteria 8- Having measures to effectively enforce and monitor Mexican carrier licensing. FMCSA met the criteria as enforcement rules were implemented and states have adopted out of service criteria.

Table 2. Mexican Conviction Database Mexican Driver’s License Convictions by Vehicle Type From Calendar Year 2007 Through September of 2008

This table summarizes the number of Mexican driver’s license convictions as contained in the Mexican Conviction Database by vehicle type from January of 2007 through September of 2008. The source for this information is OIG’s analysis of FMCSA’s Mexican Conviction Database data.

The following are the results of the number of Mexican driver’s license convictions for calendar year 2007 for the following southern border states: Texas, California, New Mexico, and Arizona.

Mexican Driver’s License Convictions Reported by State	Commercial Vehicle	Non-Commercial Vehicle
Texas	2,254	339
California	51	21
New Mexico	120	0
Arizona	94	135

The following are the results of the number of Mexican driver’s license convictions for calendar year 2007 for the non-southern border states with a large number of convictions in 2007 and or 2008.

Mexican Driver’s License Convictions Reported by State	Commercial Vehicle	Non-Commercial Vehicle
Missouri	5	428
Hawaii	0	0

The following are the results of the number of Mexican driver’s license convictions for calendar year 2007 for the remaining 44 non-southern border states with a small number of convictions in 2007 and or 2008. These remaining 44 non-border states accounted for 1.2 percent of all convictions reported or 87 of the 7,049 convictions reported for all vehicle types from January of 2007 through September of 2008.

Mexican Driver’s License Convictions Reported by State	Commercial Vehicle	Non-Commercial Vehicle
8 states reported both vehicle types	17	9
7 states reported commercial only	8	0
4 states reported non-commercial only	0	1
25 states reported no convictions	0	0

For calendar year 2007, the total number of Mexican driver's license convictions reported by commercial vehicle and non-commercial vehicle is 2,549 and 933; respectively.

The following are the results of the number of Mexican driver's license convictions from January of 2008 through September of 2008 for the following southern border states: Texas, California, New Mexico, and Arizona.

Mexican Driver's License Convictions Reported by State	Commercial Vehicle	Non-Commercial Vehicle
Texas	1,931	606
California	278	99
New Mexico	200	0
Arizona	39	27

The following are the results of the number of Mexican driver's license convictions from January of 2008 through September of 2008 for the non-southern border states with a large number of convictions in 2007 and or 2008.

Mexican Driver's License Convictions Reported by State	Commercial Vehicle	Non-Commercial Vehicle
Missouri	1	313
Hawaii	0	21

The following are the results of the number of Mexican driver's license convictions from January of 2008 through September of 2008 for the remaining 44 non-southern border states with a small number of convictions in 2007 and or 2008.

Mexican Driver's License Convictions Reported by State	Commercial Vehicle	Non-Commercial Vehicle
8 states reported both vehicle types	11	19
7 states reported commercial only	18	0
4 states reported non-commercial only	0	4
25 states reported no convictions	0	0

From January of 2008 through September of 2008, the total number of Mexican driver's license convictions reported by commercial vehicle and non-commercial vehicle is 2,478 and 1,089; respectively.

Figure 1. FMCSA Bus Inspection Area in San Ysidro, California

This figure is a picture illustrating our observation of the close proximity of an FMCSA bus inspection area to oncoming bus traffic and portable inspection ramps at the San Ysidro, California, border crossing. Source is the OIG.

Table 3. Location of FMCSA Personnel at the United States-Mexico Border

This table demonstrates the number and location of FMCSA personnel for the following southern border states: Arizona, California, New Mexico, and Texas. The source for this information is OIG's analysis of October 2008 FMCSA Border Staff Roster.

The following are the results of the number and location of FMCSA personnel.

Staff	AZ	CA	NM	TX	Total
Inspector	24	12	7	89	132
Auditor	6	6	0	26	38
Investigator	4	13	0	26	43
Supervisor	5	5	1	12	23
Support	1	2	0	4	7
Total	40	38	8	157	243

Note: AZ=Arizona, CA=California, NM=New Mexico, TX=Texas

The following are the results of the total number of FMCSA personnel as reported in our August 2007 report as of June 2006.

Staff	AZ	CA	NM	TX	Total
Total	44	44	7	159	254

Source: OIG analysis of October 2008 FMCSA Border Staff Roster.

Table 4. United States, Mexico, and Central America Commercial Vehicle and Driver Inspections and Out-of-Service Rates in the United States

The table demonstrates the United States inspections of motor carrier commercial vehicles and drivers as well as out-of-service rates in the United States for motor carriers domiciled in the United States, Mexico, and Central America for fiscal years 2006 through 2008. The source for this information is OIG's analysis of FMCSA's Motor Carrier Management Information System data. The out-of-service rate (percentage) for vehicles resulted from a CVSA North American Level I—walk-around, underside, and driver inspection; Level II—walk-around and driver inspection; and Level V—inspection only. The out-of-service rate (percentage) for drivers resulted from CVSA North American Levels I and II inspections and a Level III—driver only inspection. Our analysis noted United States inspections of Central American motor carriers. FMCSA's December 2008 interim final rule (73 FR 76472, December 16, 2008) established a new

application process and safety monitoring system for non-North American-domiciled motor carriers, including Central American motor carriers.

Table 4, Item: 1: Inspections and Out-of-Service Rates for United States-Domiciled Motor Carriers

- In FY 2008, 2,762,525 inspections were conducted in the United States, 348,410 carriers were inspected, and the average number of inspections per carrier was 8. Also, the percentage of vehicles placed out-of-service for safety or regulation violation was 21.8 percent, and the percentage of drivers placed out-of-service for license violation was 6.9 percent.
- In FY 2007, 2,655,012 inspections were conducted in the United States, 337,835 carriers were inspected, and the average number of inspections per carrier was 8. Also, the percentage of vehicles placed out-of-service for safety or regulation violation was 21.7 percent, and the percentage of drivers placed out-of-service for license violation was 7.2 percent.
- In FY 2006, 2,554,280 inspections were conducted in the United States, 314,486 carriers were inspected, and the average number of inspections per carrier was 8. Also, the percentage of vehicles placed out-of-service for safety or regulation violation was 22.3 percent, and the percentage of drivers placed out-of-service for license violation was 7.3 percent.

Table 4, Item: 2: Inspections and Out-of-Service Rates for Mexico-Domiciled Motor Carriers

- In FY 2008, 220,405 inspections were conducted in the United States, 4,335 carriers were inspected, and the average number of inspections per carrier was 51. Also, the percentage of vehicles placed out-of-service for safety or regulation violation was 21.2 percent, and the percentage of drivers placed out-of-service for license violation was 1.2 percent.
- In FY 2007, 215,140 inspections were conducted in the United States, 4,520 carriers were inspected, and the average number of inspections per carrier was 48. Also, the percentage of vehicles placed out-of-service for safety or regulation violation was 21.6 percent, and the percentage of drivers placed out-of-service for license violation was 1.0 percent.
- In FY 2006, 211,106 inspections were conducted in the United States, 4,617 carriers were inspected, and the average number of inspections per carrier was 46. Also, the percentage of vehicles placed out-of-service for safety or regulation violation was 20.9 percent, and the percentage of drivers placed out-of-service for license violation was 1.2 percent.

Table 4, Item: 3: Inspections and Out-of-Service Rates for Central American-Domiciled Motor Carriers

- In FY 2008, 878 inspections were conducted in the United States, 134 carriers were inspected, and the average number of inspections per carrier was 7. Also, the percentage of vehicles placed out-of-service for safety or regulation violation was 38.4 percent, and the percentage of drivers placed out-of-service for license violation was 63.2 percent.
- In FY 2007, 775 inspections were conducted in the United States, 91 carriers were inspected, and the average number of inspections per carrier was 9. Also, the percentage of vehicles placed out-of-service for safety or regulation violation was 33.6 percent, and the percentage of drivers placed out-of-service for license violation was 49.4 percent.
- In FY 2006, 491 inspections were conducted in the United States, 54 carriers were inspected, and the average number of inspections per carrier was 9. Also, the percentage of vehicles placed out-of-service for safety or regulation violation was 42.7 percent, and the percentage of drivers placed out-of-service for license violation was 29.3 percent.

Table 5. Truck and Bus Border Crossings that OIG Observed

This table demonstrates the southern truck border crossings observed by the OIG. They include: Bridge of the Americas, El Paso, TX; Calexico East, Calexico, CA; Columbia Solidarity Bridge III, Laredo, TX; Camargo Bridge, Rio Grande City, TX; Eagle Pass, TX; Otay Mesa, CA; San Luis, AZ; Santa Teresa, NM; Tecate, CA; World Trade Bridge, Laredo, TX; and Ysleta-Zaragoza Bridge, El Paso, TX. This table also demonstrates the southern bus border crossings observed by the OIG. They are: Calexico, CA; Juarez-Lincoln Bridge, Laredo, TX; McAllen-Hidalgo Bridge, Hidalgo, TX; Otay Mesa, CA; and San Ysidro, CA.

Note: TX=Texas, CA=California, AZ=Arizona, NM=New Mexico.