



**U.S. Department of  
Transportation**

Office of the Secretary  
of Transportation

The Inspector General

Office of Inspector General  
Washington, D.C. 20590

September 6, 2002

The Honorable Henry Bonilla  
Member  
House of Representatives  
2458 Rayburn Office Building  
Washington, DC 20515

Dear Representative Bonilla:

This letter is in response to your inquiry of May 2, 2002, which asked the Office of Inspector General (OIG) to answer two questions concerning the use of border infrastructure facilities funds contained in the fiscal year 2002 Transportation Appropriations Act (Act) to construct border inspection facilities in Laredo, Texas.

Specifically, you asked the OIG: “does P.L. 107-87 prohibit the Federal Motor Carrier Safety Administration (FMCSA) from placing the border inspection facilities for long-haul carriers away from commercial border crossings,” and “if the border inspection facility is not located at the commercial border crossing what additional actions would FMCSA have to implement to ensure that it meets its responsibilities and complies with Section 350 of the law?” In response to your inquiry, we conducted a review of the Act, its legislative history, other relevant congressional mandates, and the directly interrelated Federal statutes and programs concerning border infrastructure and inspection activities.

As you are aware, several relevant developments occurred since your inquiry. First, the Conference Report (Report 107-593) for H.R. 4775, the fiscal year 2002 Supplemental Appropriations Act (P.L. 107-206), contains language instructing the Texas Department of Transportation to “consult with the City of Laredo and consider their concerns regarding site selection for a cross-border inspection facility.” The Report further states that “under no circumstances should FMCSA approve a site for such an inspection facility if the location compromises the ability to enforce all statutory and regulatory safety requirements,” including those contained in the P.L. 107-87. Secondly, the City of Laredo has publicly announced plans to file a lawsuit against the U.S. Department of Transportation, along with other Federal and State agencies, to prevent the construction of new inspection facilities at the Laredo border crossings.

While we appreciate your seeking our assessment of this matter, we want to emphasize that our views are not dispositive on the issue of constructing additional inspection facilities at the Laredo border crossings. Moreover, the views of the Office of Inspector General do not necessarily represent the position of the Department. FMCSA has determined that placing inspection facilities at the border crossings best meets congressional intent with respect to public safety. The Department's Office of General Counsel, in consultation with the operating administrations involved, will determine the Department's official legal views on this matter. Importantly, should the City of Laredo proceed with a lawsuit as announced, a court will be the final arbiter of this issue.

As to your first question, P.L. 107-87, originally H.R. 2299, does not contain statutory language regarding the precise location of border inspection facilities. The statutory language in the Act says, "*\$56,300,000 shall be available for border infrastructure improvements.*"

While the Act does not specify locations for the infrastructure improvements, it does contain numerous provisions that mandate inspection activities be performed at the commercial border crossings. In the course of our review, we found several specific statutory references to the border or to inspection activities that could only be carried out at the border. We do not see how the statutory requirements can possibly be met unless safety inspections and associated activities are performed at the border. Statutory references from P.L. 107-87 include the following:

- Section 350 (a)(9), which "*requires commercial vehicles operated by a Mexican motor carrier to **enter the United States only at commercial border crossings where and when a certified motor carrier safety inspector is on duty and where adequate capacity exists to conduct a sufficient number of meaningful safety inspections and to accommodate vehicles placed out-of-service as a result of said inspections.***" (Emphasis added)
- Section 350 (a)(5), which "*requires **inspections of all commercial vehicles of Mexican motor carriers authorized, or seeking authority to operate beyond United States municipalities and commercial zones on the United States-Mexico border that do not display a valid Commercial Vehicle Safety Alliance inspection decal.***" (Emphasis added)
- Section 350 (a)(3), which "*requires Federal and State inspectors to verify electronically the status and validity of the license of **each driver of a Mexican motor carrier commercial vehicle crossing the border.***" (Emphasis added)

- Section 350 (a)(7)(A), which “*requires inspectors to verify the weight of each Mexican motor carrier commercial vehicle **entering the United States...at the high volume border crossings.***” (Emphasis added)

As to your second question, if permanent State inspection facilities are not built at the Laredo commercial border crossings, FMCSA will have to continue to carry out its responsibility to ensure that Mexican commercial vehicles and drivers operating within the commercial zone comply with U.S. safety regulations, and perform the safety inspection activities mandated by Section 350 of P.L. 107-87. There are two categories of Mexican carriers seeking to operate in the United States—those operating within the commercial zone and those operating long haul.

An inspection facility 28 miles inland poses the risk that Mexican carriers’ vehicles and drivers operating in the commercial zone would not be inspected because the U.S. commercial zone ends before the proposed site of the inland facility. Thus, FMCSA would have no reasonable assurance of the safety of Mexican commercial vehicles and drivers operating in the U.S. commercial zone. Currently, Mexican carriers’ vehicles and drivers operating in the commercial zone are subject to inspection by Federal or State inspectors at the border crossings to ensure compliance with U.S. safety rules. This safety responsibility cannot be performed unless the Federal or State inspectors are at the border crossings.

As to the long-haul traffic, FMCSA must ensure that Section 350 safety requirements of P.L. 107-87 are implemented. The statute requires specific inspection activities at the border to ensure safety of the vehicles and drivers. Without Federal or State inspectors at the border crossings, there are no assurances that the long-haul vehicles and drivers, traveling 28 miles on U.S. roads to reach the inland facility, are safe.

While it is likely that over time long-haul traffic will materialize, we have no basis to forecast with certainty the number of Mexican carriers that will seek long-haul authority, when that will occur, and at which crossings the vehicles will enter the United States. So far, the number of carriers seeking authority has not been substantial. As of July 5, 2002, which is the latest information available to us, FMCSA had received 43 applications from Mexican carriers applying for long-haul authority. Thirty-four of the 43 carriers indicated they intended to operate a combined total of 329 vehicles. Nine of the applications were incomplete and did not provide information on the number of vehicles they intend to operate long haul in the United States.

At this point, if the inspection facility were placed inland rather than at the border, Federal or State inspectors would have to be placed at highway exits between the port of entry and the inland facility or inspection capabilities would have to be established

on each route to preclude Mexican commercial vehicles and drivers from evading the safety net (inspections).

In addition, other Federal agencies such as the Department of Agriculture, Immigration and Naturalization Service (INS), and the U.S. Customs Service would still be required to perform inspections and security checks at the border crossings. Currently, INS performs its initial security checks of individuals entering the United States at the border crossings and secondarily at inland locations. In our opinion, it is reasonable to get a base of experience on the volume of long-haul traffic and the logistics associated with that traffic before Congress, the Administration and the State of Texas, based on consultations with the City of Laredo, consider whether alternative plans at the border or further inland will be either necessary or desirable.

If I can answer any questions or be of further assistance, please feel free to contact me at (202) 366-1959, or my Deputy, Todd J. Zinser, at (202) 366-6767.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth M. Mead". The signature is fluid and cursive, with a prominent initial "K" and a long, sweeping tail.

Kenneth M. Mead  
Inspector General