

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

*Federal Motor Carrier Safety Administration*

**Report Number: MH-2005-032**

**Date Issued: January 3, 2005**



# Memorandum

U.S. Department of  
Transportation  
Office of the Secretary  
of Transportation  
Office of Inspector General

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Subject: ACTION: Follow-up Audit of the Implementation of the North American Free Trade Agreement's Cross-Border Trucking Provisions  
Report Number: MH-2005-032

Date: January 3, 2005

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for Auditing and Evaluation

Reply to  
Attn. of: JA-40

To: Federal Motor Carrier Safety Administrator

## INTRODUCTION

With the signing of the North American Free Trade Agreement (NAFTA) in December 1992, the United States of America and Mexico consented to cross-border trucking throughout both countries by January 1, 2000. However, in December 1995, the United States indefinitely delayed implementation of NAFTA cross-border provisions, citing safety reasons.

The Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 2002 (the FY 2002 Act) provided funds to the Federal Motor Carrier Safety Administration (FMCSA) to implement NAFTA. However, Section 350 of the FY 2002 Act prohibited FMCSA from using funds to review or process applications of Mexican-domiciled motor carriers (Mexican motor carriers) seeking to operate throughout the United States (commonly referred to as long-haul) until certain safety requirements and preconditions were met. In a conference agreement to the Consolidated Appropriations Act for FY 2004, Congress made funds appropriated in the FY 2004 Act subject to the terms and conditions of Section 350, which include three major areas.

- **FMCSA Safety Monitoring Requirements.** Before FMCSA can process an application by a Mexican motor carrier for authority to operate beyond the

United States (U.S.) commercial zones,<sup>1</sup> FMCSA must meet a number of preconditions.<sup>2</sup> Among these are requiring safety audits of Mexican motor carriers before granting long-haul authority; verifying Mexican commercial driver's licenses; and inspecting the vehicles operated by Mexican motor carriers seeking long-haul authority.

- **Hazardous Materials Agreement.** Section 350 restricts vehicles owned or leased by Mexican motor carriers and transporting hazardous materials from operating outside the commercial zones until an agreement is reached between the United States and Mexico that holds hazardous material drivers from both countries to substantially the same requirements.
- **OIG Review of Border Infrastructure and Procedures.** Section 350 directs the Office of Inspector General (OIG) to annually review border operations and to verify whether eight requirements are met. These requirements relate to the hiring and training of inspectors, establishment of inspection facilities, and development of safety processes and procedures for Mexican long-haul motor carriers.

**Prior OIG Findings and Recent Events.** On June 25, 2002, we reported<sup>3</sup> that FMCSA had made substantial progress toward meeting Section 350 requirements, and we identified issues related to hiring, training, facilities improvements, and database access that required further action. On November 20, 2002, the Secretary of Transportation certified that authorizing Mexican carrier operations throughout the United States did not pose an unacceptable safety risk. On November 27, 2002, the President lifted the moratorium on granting operating authority to Mexican motor carriers. The President further authorized the Department of Transportation to act on applications that Mexican motor carriers submitted to obtain authority to operate scheduled cross-border bus and truck services throughout the United States.

On January 16, 2003, the President's action and the processing of Mexican carrier applications were effectively precluded when a panel of the U.S. Court of Appeals for the Ninth Circuit issued its decision in *Public Citizen v. Department of Transportation*. The Court of Appeals' decision set aside three FMCSA regulations needed for processing Mexican applications for long-haul authority, pending completion of an Environmental Impact Statement and a Clean Air Act analysis. On June 7, 2004, the U.S. Supreme Court reversed the Ninth Circuit's January 2003 ruling. In a press release responding to the Supreme Court's decision, the Secretary of Transportation stated that the ruling "opens the way for

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<sup>1</sup> Commercial zones at the U.S.-Mexico border generally extend from 3 to 20 miles north of U.S. border cities.

<sup>2</sup> A complete list of Section 350 provisions is in Exhibit D.

<sup>3</sup> OIG Report Number MH-2002-094, "Implementation of Commercial Vehicle Safety Requirements at the U.S.-Mexico Border," June 25, 2002. OIG reports can be found on our website: [www.oig.dot.gov](http://www.oig.dot.gov).

the U.S. Department of Transportation to continue working with Mexican authorities to move forward with long-haul bus and truck operations.”

Our most recent report<sup>4</sup> on the implementation of the provisions in Section 350 of the FY 2002 Act was issued on May 16, 2003, after the Ninth Circuit’s ruling and prior to the Supreme Court’s decision. We reported that FMCSA had substantially completed the actions necessary to meet Section 350 requirements, but we raised a concern about the enforcement of operating authority rules by the states.

## **OBJECTIVES AND SCOPE**

Our primary objective was to verify whether FMCSA has the staff, facilities, equipment, and procedures in place to comply with the provisions in Section 350 of the FY 2002 Act that are to be reviewed annually by the OIG. We also:

- Identified any impediments preventing FMCSA personnel from conducting safety audits and compliance reviews in Mexico, and assessed the current applicability of the hazardous material provision in Section 350.
- Examined any additional issues that came to our attention that could present safety issues for implementation of NAFTA cross-border trucking provisions at the southern border.

Our audit work included comprehensive reviews at 14 statistically selected commercial crossings at the southern border that had approximately 90 percent of the 4.3 million truck entries into the United States from Mexico in FY 2003. The audit also included visits to 17 selected bus crossings, reviews of inspections carried out at the border, and our analysis of data on inspections of U.S. and Mexican carriers. Details of our objectives, scope, and methodology are in Exhibit A. Further information on prior audit coverage is in Exhibit B.

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<sup>4</sup> OIG Report Number MH-2003-041, “Follow-up Audit on the Implementation of Commercial Vehicle Safety Requirements at the U.S.-Mexico Border,” May 16, 2003.

## RESULTS IN BRIEF

FMCSA has sufficient staff, facilities, equipment, and procedures in place to substantially meet the eight Section 350 provisions for Mexican long-haul trucks. The vehicle out-of-service rate for Mexican motor carriers has declined from 40 percent to 23 percent between FYs 1999 and 2003, as compared to the FY 2003 rate of 22 percent for U.S. interstate carriers.<sup>5</sup> As of September 2004, FMCSA had received applications from 678 Mexican motor carriers seeking long-haul authority to operate about 4,000 vehicles. This is up from the 232 carriers that had applied as of March 2003, with the intention of operating about 1,400 long-haul vehicles.

However, until an agreement or other understandings related to on-site safety reviews is reached with Mexico, FMCSA cannot, in our view, grant long-haul operating authority to any Mexican motor carrier. Section 350 requires that 50 percent of Mexican motor carriers applying for long-haul authority be reviewed on-site and that on-site reviews cover at least 50 percent of the estimated truck traffic in any year. Agreed-upon procedures with Mexico for conducting such reviews have not yet been established, however, Department officials are evaluating with Mexico the need for and the contents of a protocol regarding on-site reviews.

Additionally, new background requirements for U.S. drivers applying for hazardous materials endorsements were instituted by the USA PATRIOT Act and partially implemented, following our last review, by FMCSA and Transportation Security Administration (TSA) regulations. Given these new regulations, an agreement will need to be in place with Mexico before vehicles owned or leased by a Mexican motor carrier that is granted operating authority by FMCSA can be permitted to haul hazardous materials beyond the commercial zones. TSA is responsible for assessing intelligence and other information in order to identify individuals who pose a threat to transportation security and to coordinate countermeasures with other Federal agencies to address such threats. FMCSA and TSA agree that TSA will have the lead in negotiating the agreement with Mexico on this.

While the negotiations are being carried out with Mexico on these two issues, which are preconditions to opening the border, FMCSA should close remaining gaps in reaching full compliance with Section 350 requirements related to bus coverage, enforcement authority, Weigh-in-Motion Systems (WIMS), and the

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<sup>5</sup> Rates are calculated by OIG using FMCSA data. The FY 2003 vehicle out-of-service rate for Canadian carriers was 12 percent.

comprehensiveness of the system for monitoring Mexican driver records in the United States.

We also identified five additional areas that do not pose specific Section 350 compliance issues, but which should be dealt with to prevent future problems. FMCSA needs to obtain accurate data on Mexican carriers during future pre-authority safety audits, ensure that Mexican carriers previously allowed to operate outside commercial zones provide insurance information to FMCSA's database, complete ongoing efforts to address drug and alcohol testing issues, provide an equivalent replacement for a border inspection facility that is being displaced, and issue a final rule on Federal Motor Vehicle Safety Standards.

**Bus Coverage.** Commercial vehicles, by definition, include trucks and buses. Section 350 provides no specific guidance distinguishing commercial buses from commercial trucks although buses operate differently from commercial trucks at the border. Trucks are restricted to designated commercial crossings at specific times. Buses can use commercial truck crossings, but are permitted to enter the United States at separate border crossings designated for buses.

Our work and FMCSA's own reports show that, while buses are currently inspected at commercial truck crossings, sufficient staff is not available at some designated bus crossings to meet Section 350 requirements for verifying the driver's commercial license and inspecting vehicles that have expired Commercial Vehicle Safety Alliance (CVSA)<sup>6</sup> decals.

- At 4 crossings reviewed, buses crossing the border were not inspected and at 10 other crossings inspection coverage was sporadic. For example, at Nogales, Arizona, after 10:00 p.m., buses are permitted to use a border crossing away from the commercial crossing that is not staffed by FMCSA or state inspection personnel.
- FMCSA reports, provided to us in response to our May 2003 audit, stated that at 15 bus crossings at the southern border FMCSA did not have adequate facilities or personnel to meet Section 350 requirements for commercial vehicles.

Although the number of future long-haul bus applicants is unknown, as of September 2004, FMCSA had applications from 6 bus companies out of 678 applications for long-haul authority. Our May 2003 report noted that 238 motor carriers, including 5 bus companies, had applied for long-haul operating authority.

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<sup>6</sup> CVSA is an organization of Federal, state, and provincial government agencies and representatives from private industry in the United States, Canada, and Mexico dedicated to improving commercial vehicle safety.

FMCSA officials told us a plan has been developed to enhance bus inspections and FMCSA will work with passenger bus companies granted long-haul authority to see that Section 350 requirements are met. However, FMCSA needs to provide an aggressive timeline for developing and implementing the policy directives designed to ensure that bus inspections and driver checks are properly handled for buses.

Current methods used for bus inspections, such as inspecting a bus when it reaches its destination, could be applied to buses granted long-haul authority. We recognize that such alternative methods may be appropriate given issues such as the handling of passengers during inspections. However, current FMCSA policies do not detail specific alternative procedures to be used for long-haul bus traffic at the border. Before granting long-haul authority to buses, FMCSA should revise its policies and implement procedures for inspecting long-haul buses across all four southern border states. Staffing and facility plans should also be revised, as necessary, to respond to the issues raised by FMCSA staff and our observations.

**Enforcement Authority.** Section 350 requires that measures are in place to ensure that effective enforcement actions can be taken against Mexican motor carriers. This includes taking action against Mexican carriers that do not have proper operating authority. Our June 2002 report brought to the Department's attention that only California and Arizona could enforce operating authority violations. The situation has improved since our 2002 report. However, gaps still exist in this important control that allows states to take action against Mexican carriers attempting to operate beyond the commercial zones without complying with the safety rules established in Section 350.

FMCSA issued an interim final rule in August 2002 requiring state inspectors to place out of service any commercial vehicles operating without authority or beyond the scope of their authority. As of July 2004, only five states outside the border region (Alaska, Michigan, New Jersey, New York, and North Carolina), still needed to adopt rules to enforce operating authority. This is good progress. However, based upon discussions with officials at 14<sup>7</sup> states that had adopted the rule, problems exist with its implementation. Only 4 states reported being prepared to place vehicles out of service. The remaining 10 reported that they would only issue fines or citations to the drivers or take no action pending more guidance from FMCSA. Four states contacted also expressed implementation concerns because the CVSA out-of-service criteria do not include vehicles operating without authority. In our view, full compliance with the August 2002 rule will not occur as long as certain states view the terminology in the rule as an

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<sup>7</sup> Illinois, West Virginia, Colorado, Tennessee, Alabama, Indiana, Texas, Florida, Ohio, Missouri, Louisiana, Delaware, Montana, South Dakota.

impediment to issuing out-of-service violations to carriers operating without authority.

We cannot reliably estimate the magnitude to which Mexican carriers are operating outside the commercial zones. However, our analysis of FMCSA's database covering the period from September 2002 through May 2004 shows 197 inspections and 9 crashes in non-border states involving 144 Mexican carriers that are not authorized to operate outside the commercial zone. An unknown number of the Mexican carriers could be legally operating in the United States under an exception<sup>8</sup> allowing Mexican or other foreign carriers to transit the United States as long as they meet U.S. insurance filing and safety requirements and do not load or unload cargo in the United States. Also, several of the nine crashes may have been erroneously charged to a Mexican carrier.

To reach full compliance with Section 350 provisions on taking effective enforcement actions against Mexican carriers, FMCSA should ensure that all states adopt and fully comply with the August 2002 rule. Specifically, FMCSA should address concerns about the use of out-of-service terminology in the enforcement authority rule and provide guidance or training support as needed to ensure complete and consistent implementation of the rule by the states.

**Weigh-in-Motion Systems.** As required by Section 350, WIMS are in place at the 10 highest volume crossings. However, at the time of our visits, WIMS were not working at four Texas inspection facilities. We were subsequently informed that as of September 2004, three of the four were working. In our opinion, full compliance with Section 350 requires that all WIMS be operable at the 10 highest volume crossings. In responding to the draft report, FMCSA stated that it had funded the 10 WIMS and a requirement for states to have a maintenance program would be included in the state's Commercial Vehicle Safety Plans.

**Improving the System for Monitoring Mexican Driver Records in the United States.** Section 350 requires a database with sufficiently comprehensive data to allow for the safety monitoring of Mexican motor carriers and driver records. While FMCSA has established separate systems for monitoring Mexican carriers and drivers, four states (Maine, Oregon, Pennsylvania, and Virginia) have not tested the driver system<sup>9</sup> to ensure that they could send Mexican driver convictions to the database. In addition, as of June 2004, California had provided only 19 convictions to the database, while Texas, by contrast, had over 4,000 convictions listed. To ensure that the driver system contains sufficiently comprehensive data, FMCSA should take actions to ensure that all states complete testing of the system and to correct problems with inconsistent populating of the database.

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<sup>8</sup> Title 49, United States Code (USC), Section 13501 (This provision provides DOT's jurisdiction over motor carrier operating authority, but does not include transportation between two foreign countries.)

<sup>9</sup> Known as the 52<sup>nd</sup> state system.

**Additional Areas Needing Attention.** We identified five additional areas that do not pose Section 350 compliance problems, but which should be dealt with to prevent future problems should long-haul authority be granted to Mexican motor carriers.

**Data on Mexican Carriers.** The effective monitoring of Mexican carriers over the long term will depend, in part, on the quality of the data obtained on their operations. One potential problem area involves data on Mexican motor carriers supplied to and used by FMCSA's Motor Carrier Safety Status Measurement System (SafeStat) to target high-risk carriers for compliance reviews. This system relies on motor carrier-supplied information on the number of vehicles and the number of drivers, in combination with other data, to calculate rankings for carriers. Based on information obtained for a prior audit,<sup>10</sup> data quality problems are more serious, on average, for Mexican carriers than for U.S. carriers, although data for U.S. carriers is also a concern. For example, about 50 percent of the Mexican motor carriers on record had reported zero vehicles or power units, versus 10 percent for U.S. carriers. To eliminate this problem, FMCSA will need to ensure that data obtained from Mexican carriers prior to the granting of long-haul authority are accurate and up-to-date.

SafeStat also uses state-reported crashes to calculate SafeStat rankings and target carriers for review. However, we reported that an estimated one-third of the trucks involved in crashes were not reported to the FMCSA database. In response to our prior report, FMCSA has taken actions to address data quality problems. The degree to which FMCSA can successfully track any future crashes involving Mexican carriers operating in the United States will be dependent, in part, on the success of these efforts.

**Verifying Insurance Information.** Section 350 states that FMCSA must require Mexican motor carriers seeking long-haul authority to provide proof of valid insurance with a company licensed in the United States, and FMCSA must verify proof of insurance during safety reviews. FMCSA's rule for Mexican long-haul applicants and the guidance issued for pre-authority safety reviews for long-haul applicants include this requirement.

We could not assess the implementation of this requirement because long-haul authority has not yet been granted to any Mexican motor

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<sup>10</sup> OIG Report Number MH-2004-034, "Improvements Needed in the Safety Status Measurement System," February 13, 2004.

carriers. However, given concerns brought to our attention about U.S. companies being unwilling to offer coverage to Mexican-based companies, vigilance will be needed to ensure that valid insurance is being carried by all Mexican motor carriers. In addition, about 1,300 Mexican-domiciled motor carriers, previously given approval to operate beyond the commercial zone because they were at least 55 percent U.S.-owned, should be required to provide information for FMCSA's insurance database.

**Drug and Alcohol Testing.** Section 350 states that FMCSA must conduct a safety audit of Mexican motor carriers seeking long-haul authority, including verification that the carrier has a drug and alcohol testing program consistent with Code of Federal Regulations (CFR), Title 49, Part 40. Because long-haul authority has not yet been granted to any Mexican motor carriers and there have been no safety audits of long-haul applicant carriers, we could not assess the implementation of this requirement. We did find that safety audits conducted of Mexican carriers operating within the commercial zone do address drug and alcohol testing requirements. These requirements include the use of drug testing labs certified by the U.S. Department of Health and Human Services (HHS).

Mexico does not have a certified drug testing lab at this time. Department of Transportation (DOT) officials informed us that until such a lab meets HHS certification standards, drug test collection facilities in Mexico are sending specimens to certified labs in the United States for processing. DOT's Office of Drug and Alcohol Policy and Compliance (ODAPC) is working with FMCSA and other DOT staff to develop an internal plan for addressing drug and alcohol testing issues, and a memorandum of understanding has been established with Mexico in the drug and alcohol testing area. DOT agencies, through inspections and audits, periodically review U.S. collection facilities to ensure compliance with established protocols. Collection facilities in Mexico are not reviewed by U.S. officials. The need for a certified lab in Mexico will intensify, and the need to have controls over collection sites will increase, as the number of Mexican motor carriers seeking long-haul authority increases. FMCSA should continue its work with ODAPC and other DOT staff to ensure that drug and alcohol testing issues, such as the establishment of sufficient controls at collection sites, are adequately addressed.

**Replacements for an Inspection Facility.** Our latest visits to the border also showed that a replacement for the Federal inspection facility

at Eagle Pass in Texas, which is scheduled to be displaced within a year, is uncertain at this time. Eagle Pass is 1 of the 10 largest volume crossings. Because current plans do not include new space for FMCSA inspections, FMCSA will have to work with the General Services Administration (GSA) to ensure that a comparable inspection facility at Eagle Pass is constructed. In its response to the draft report, FMCSA stated that it is working with GSA to ensure that GSA considers its needs in future plans at all ports, including Eagle Pass.

**Vehicle Safety Standards.** Finally, although not a specific requirement of Section 350, FMCSA has proposed a rule to ensure that all motor carriers operating in the United States, including Mexican carriers, use only commercial vehicles that were certified by the manufacturer as meeting all applicable Federal safety requirements. When proposing the rule in 2002, FMCSA stated that the action was needed to ensure effective enforcement against commercial vehicles that may not meet all of the applicable safety standards. Comments on the proposed rule showed opposition to a 24-month phase-in period that would apply to Mexican vehicles previously allowed to operate in the United States. Congress also acted in the FY 2005 Omnibus Appropriations Act to prohibit the use of funds to issue or implement any regulation related to a phase-in period. Resolution of this issue will be important if increasing numbers of Mexican motor carriers are operating in the United States. As of November 29, 2004, the rule was under review in the Office of Management and Budget.

Further details on our work are provided below. Our recommendations recognize that the resolution of issues involving reaching agreements or understandings with Mexican authorities may be outside FMCSA's control. However, FMCSA should address shortfalls that remain in meeting Section 350 requirements, and forestall future implementation problems during the time that may be needed to reach these agreements or understandings.

## **SUMMARY OF MANAGEMENT COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE**

We provided FMCSA a draft of this report on September 20, 2004. In its comments, provided on October 20, 2004 and December 10, 2004, FMCSA identified actions taken on each of the recommendations and stated that it would continue to deal with these issues and others as they are brought to its attention. FMCSA also expressed concerns that the audit's scope was too broad in that it

included recommendations not specifically related to meeting congressional preconditions to opening the United States-Mexico border.

We appreciate FMCSA's comments on the draft report. However, we continue to report on other issues we believe merit FMCSA's attention, in addition to the unmet preconditions for opening the border, as cited in our discussion for recommendation 1. FMCSA has substantially met the eight Section 350 provisions for Mexican long-haul trucks subject to OIG verification. Still, our obligation to conduct a comprehensive review of border operations requires us to report on remaining gaps impacting full compliance with Section 350 and other issues, outside Section 350 requirements, that will need attention should long-haul authority be granted to Mexican motor carriers.

Overall, FMCSA comments on our specific recommendations were responsive, and where appropriate, target dates were provided for planned actions. Specifically, regarding recommendation 1, which dealt with two required agreements or understandings for opening the border, FMCSA will:

- Work closely with Departmental and other officials to ensure that the on-site reviews will be conducted in a legal manner and with the knowledge of the appropriate Mexican government officials.
- Continue to provide technical assistance to TSA, as requested, with the development of an agreement with Mexico regarding equivalent requirements for Mexican hazardous material drivers. TSA will have the lead.

For recommendation 2, regarding the remaining gaps in meeting Section 350 requirements, FMCSA agreed to:

- Work with bus carriers granted operating authority and with the Bureau of Customs and Border Protection to ensure Section 350 requirements are met. The approved plans and procedures will be in place no later than the end of FY 2005.
- Aggressively encourage states that have not yet adopted the August 2002 rule on operating authority rule to do so and states that have adopted the rule to more effectively enforce it. We note that by September 2005, states must enforce the August 2002 rule as a requirement for the receipt of Motor Carrier Safety Assistance Program funds.
- Require each of the states with WIMS to include in its annual Commercial Vehicle Safety Plans a program for the maintenance of its border WIMS.

- Meet with the states to explain and/or correct inconsistencies in the database on Mexican drivers by the end of FY 2005.

These actions are responsive to recommendation 2. Accomplishment of planned actions will be especially important if the issues being discussed with Mexico are resolved quickly, and if an increasing number of Mexican motor carriers are operating in the United States. The implementation of revised policies and procedures for buses is needed to ensure appropriate driver checks and vehicle inspections are performed for passenger carriers granted long-haul authority. Timely action to achieve full state compliance with the August 2002 rule and to improve the data used for monitoring Mexican drivers will provide controls against Mexican carriers that do not comply with Section 350 requirements and Mexican drivers that do not operate vehicles safely in the United States. Actions planned on WIMS will protect the Federal investment in these systems.

For recommendation 3, regarding areas that do not pose specific Section 350 compliance issues, but which will need attention should long-haul authority be granted to Mexican motor carriers, FMCSA stated that:

- Information on Mexican carriers will be verified during safety audits.
- Insurance information on Mexican carriers currently granted authority to operate outside the commercial zone will be addressed as FMCSA receives and begins to process the applications.
- It will meet with ODAPC at least semiannually, and with appropriate Mexican government officials, in conjunction with ODACP, to ensure proper procedures are followed at the collection sites in Mexico. In addition, it will emphasize attention to controlled substance and alcohol testing requirements during required safety audits.

FMCSA's comments and planned actions on recommendation 3 are responsive and we will follow up on agreed actions, as appropriate, in future audit work.

## RESULTS

### **Required Agreements or Understandings on On-Site Reviews and Hazardous Material Drivers**

The FY 2002 Act, Section 350, prohibited FMCSA from using funds to review or process applications of Mexican-domiciled motor carriers until certain preconditions involving on-site reviews of Mexican carriers are met. Section 350 also restricted the operation of any vehicle owned or leased by a Mexican motor carrier until an agreement with Mexico ensures that Mexican drivers of hazardous materials meet substantially the same requirements as that of U.S. drivers.

**Agreement Allowing On-Site Reviews.** Section 350 requires 50 percent of all reviews of all Mexican carriers be conducted on-site and that on-site reviews be conducted for 50 percent of the estimated truck traffic in any year. Thus, as of June 2004, 339 of the 678 Mexican carriers seeking long-haul authority would need to receive on-site safety reviews<sup>11</sup> in Mexico to meet the requirements of Section 350. No agreement or understanding has yet been reached between Mexico and the United States on conducting these on-site reviews.

While Section 350 does not require that a specific agreement be in place before the on-site reviews can be conducted, FMCSA officials stated that the Department's leadership would like to establish an appropriate understanding with Mexico prior to sending FMCSA personnel into Mexico to conduct the reviews. Officials at the border also indicated that they were awaiting procedures from FMCSA Headquarters on conducting on-site reviews. As of August 4, 2004, safety reviews and compliance reviews of Mexican motor carriers operating in the commercial zone were conducted in the United States.

The Department is evaluating the need for and the contents of a protocol to guide inspectors and auditors to conduct the on-site reviews in Mexico. In our opinion, unless the Department concludes that an agreement or appropriate understanding with Mexico is not required for FMCSA personnel to conduct reviews in Mexico, the lack of agreed-upon procedures would at this time preclude the granting of operating authority to any Mexican long-haul carriers. In commenting on the draft report, FMCSA observed that the reference to "any" Mexican long-haul carriers was an overstatement since Section 350 does not require on-site compliance reviews for Mexican carriers with three or fewer commercial vehicles. We recognize that Section 350 does not require on-site reviews for Mexican carriers with three or fewer commercial vehicles under certain conditions. However, in

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<sup>11</sup> Known as safety audits.

our opinion, this provision on small carriers does not supersede other Section 350 requirements that 50 percent of all safety reviews of all Mexican carriers be conducted on-site and that such inspections cover at least 50 percent of estimated truck traffic in any year. Thus, until an agreement or understanding has been reached between Mexico and the United States on conducting on-site reviews, the provision allowing small carriers to be exempted from the on-site requirement should not be implemented.

**Hazardous Material Carriers.** Section 350 states that no vehicles owned or leased by a Mexican motor carrier and carrying hazardous materials in a placardable quantity may be permitted to operate outside the commercial zones until the United States has completed an agreement with Mexico related to the drivers of such vehicles. The agreement must ensure that drivers of such vehicles meet substantially the same requirements as that of U.S. drivers carrying hazardous materials. FMCSA and TSA agree that TSA will have the lead in negotiating this agreement.

Although a 1991 agreement between the United States and Mexico treated commercial driver's licenses in each country as equivalent, requirements have changed for certain U.S. drivers. Specifically, the requirements for U.S. drivers with hazardous material endorsements significantly changed with the USA PATRIOT Act, enacted in 2001.<sup>12</sup> The Act requires background checks for all commercial drivers who apply for, renew, or transfer a hazardous material endorsement.

FMCSA and TSA issued regulations to implement the legislation in May 2003. The FMCSA regulations, effective on November 3, 2003, require applicants for hazardous material endorsements to comply with TSA regulations on hazardous material endorsements. TSA regulations prohibit an individual from applying for or holding hazardous material endorsements if the individual has been convicted of a disqualifying criminal offense such as murder, robbery, or extortion. U.S. drivers with hazardous materials endorsements who have committed these offenses are currently required to relinquish their endorsements. In addition, TSA stated before Congress on May 12, 2004 that it will conduct name-based security threat assessments for all 3.5 million U.S. drivers holding hazardous material endorsements by June 2004. The implementation of fingerprint-based background checks by the states has been repeatedly delayed, and is not scheduled for implementation, for new drivers, until January 31, 2005.

As of September 2, 2004, neither TSA nor FMCSA had reached an agreement with the Government of Mexico to ensure that drivers of vehicles carrying

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<sup>12</sup> Section 1012 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.

placardable quantities of hazardous materials meet substantially the same requirements as United States drivers carrying such materials. Given the requirements of the USA PATRIOT Act that are in effect and other provisions that are being implemented, no vehicles owned or leased by Mexican motor carriers can be permitted to haul hazardous materials beyond the commercial zones until an agreement is in effect that meets the provision of Section 350 related to Mexican drivers of hazardous materials. This provision would not prevent FMCSA from granting operating authority to Mexican carriers but it would place restrictions on the hauling of hazardous materials by vehicles owned or leased by those carriers.

## **OIG Review of Border Infrastructure and Procedures**

Based on our review, FMCSA has sufficient staff, facilities, equipment, and procedures in place to substantially meet the eight Section 350 verification requirements for Mexican long-haul trucks. Over the past 4 years, as inspections of Mexican commercial vehicles within the southern border zones have increased the out-of-service<sup>13</sup> rate for Mexican vehicles has decreased from 40 to 23 percent. However, although FMCSA has substantially fulfilled the eight verification requirements, we found several conditions requiring attention to ensure that Section 350 requirements are fully implemented.

### *Requirements on Border Infrastructure and Procedures Substantially Fulfilled*

**Commercial Traffic and Out-of-Service Rates.** Approximately 4.3 million commercial trucks enter the United States at the Mexico border each year. Federal and state inspections<sup>14</sup> of Mexican trucks within the southern border zones have increased significantly over the last 4 years, with vehicle inspections increasing from 37,000 in FY 1999 to 136,000 in FY 2003.

As shown in Figure 1, as the number of vehicle inspections has increased, the rate of Mexican trucks placed out-of-service for vehicle safety violations has declined from 40 percent of inspections in FY 1999 to 23 percent in FY 2003. By comparison, the overall rate for U.S. vehicle inspections in FY 2003 was 22

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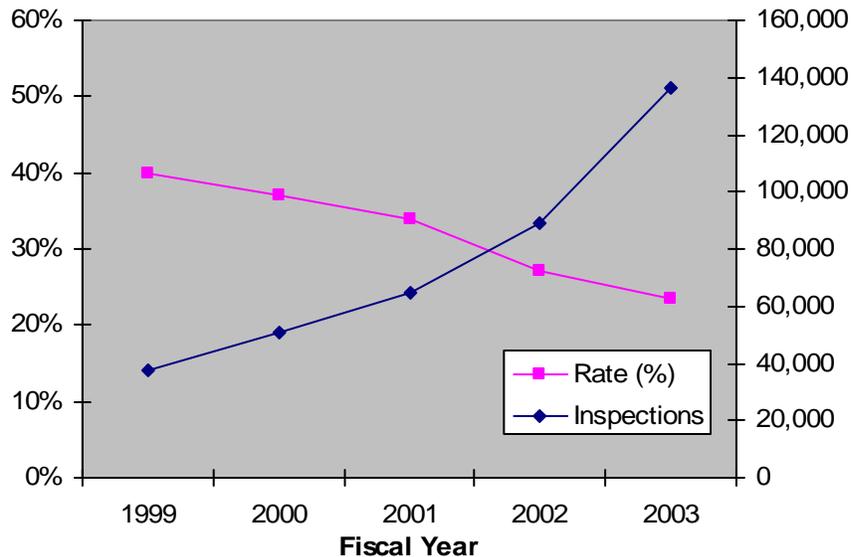
<sup>13</sup> Out-of-service violations are violations that preclude further operation of a commercial motor vehicle by its driver for a specified period or until a required condition is met.

<sup>14</sup> Section 350 requires inspection of all long-haul Mexican motor vehicles that do not have a valid CVSA decal (until the carrier has permanent authority for 3 years). Such decals expire every 3 months. Section 350 also requires the verification of driver licenses for all hazardous materials drivers, all vehicles undergoing a Level I inspection, and 50 percent of all other long-haul drivers operating beyond the commercial zones. A Level I inspection consists of (1) an examination of the driver's credentials, medical certificate and duty status, and (2) examination of the operating mechanisms of the vehicle.

percent.<sup>15</sup> This continues a correlation we previously noted<sup>16</sup> between the condition of Mexican trucks entering the United States and the level of inspection resources at the border. When compared with variations for vehicle out-of-service rates across U.S. state jurisdictions, the difference between the overall U.S. rate and the Mexican rate is not statistically significant.

In the past, the out-of-service rate for driver violations, such as driving without a license, has not differed significantly between U.S. and Mexican carriers. Both rates ranged from 6 to 8 percent from FY 1999 to FY 2002. However, our analysis shows that in FY 2003, the Mexican rate was 3.4 percent or about half of the U.S. rate.

**Figure 1: Mexican Vehicle Out-of-Service Rates Compared to Number of Inspections Performed**



Source: OIG Analysis of FMCSA Data

**Hiring and Training of Federal Enforcement Personnel at the Border.** About 95 percent or 259 of the 274 Federal enforcement personnel positions<sup>17</sup> authorized at the southern border were filled as of June 2004. This is an increase of 12 vacant positions since the last review. However, all vacant positions had hiring actions in

<sup>15</sup> The U.S. and Mexican out-of-service rates were calculated by the OIG using FMCSA data. The rate was calculated on interstate and hazardous material carriers. For an explanation of our methodology see Exhibit A.

<sup>16</sup> OIG Report Number MH-2002-094, "Implementation of Commercial Vehicle Safety Requirements at the U.S. Mexican Border," June 25, 2002.

<sup>17</sup> Section 350 referred to all of the positions as "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.

process. The 259 positions filled include 129 inspectors, 64 safety auditors, 49 investigators, and 17 supervisors or support staff. All personnel on-board had received the required training. The Table below identifies the number of people hired and trained for each of FMCSA's designated enforcement positions and shows the trend in hiring since our May 2003 audit.<sup>18</sup>

**Table: Hiring and Training of Federal Enforcement Personnel**

<b>Position</b>	<b>Goal</b>	<b>Hired and Trained (As of 4/28/2003)</b>	<b>Hired and Trained (As of 6/18/2004)</b>
Inspector	144	139	129
Auditor	67	65	64
Investigator	53	56	49
Supervisor	5	5	12*
Support Staff	5	6	5
<b>Total</b>	<b>274</b>	<b>271</b>	<b>259</b>

Source: OIG Analysis of FMCSA Data

\* Supervisors are trained to perform inspections. Included in the total of 12 are 5 first line supervisors who also conduct inspections.

Our 2003 audit reported that FMCSA had agreements in place with border state officials to provide inspection coverage at commercial crossings and ensure that the Act's safety requirements were met. During our visits to border crossings for this audit we observed good relationships between Federal and state personnel.

Consistent with the requirements of Section 350, none of the enforcement personnel hired for the southern border since the last review were experienced personnel transferred from other parts of the United States. In addition to performing compliance reviews, safety investigators have been trained to conduct safety audits and perform safety inspections of vehicles and drivers. Similarly, auditors have been trained to perform safety audits and vehicle and driver inspections.

**State Safety Inspectors.** As of June 2004, the four border states met 90 percent of their 2004 hiring goals.<sup>19</sup> Since our last review, Texas hired and trained 112 additional safety inspectors. Arizona and New Mexico reported no new hires in 2004 because their 2003 goals were met, turnover was low, and the goal did not

<sup>18</sup> OIG Report Number MH-2003-041, "Follow-up Audit on the Implementation of Commercial Vehicle Safety Requirements at the U.S.-Mexico Border," May 16, 2003.

<sup>19</sup> States reported that these positions included law enforcement personnel also trained to conduct inspections.

increase in 2004. California had 14 unfilled positions. These 14 positions were funded with a 2002 Federal grant for \$5.3 million but, at the time of our field visits, state officials told us that the positions were not filled due to state budget conditions. The positions have since been advertised. FMCSA and California officials stated that failure to fill these positions would not affect border safety or enforcement. Presently there are 381 federally-funded state inspectors at the border.

While the overall staffing situation is satisfactory at this time, FMCSA will also need to periodically reevaluate its overall resource requirements for the United States and Mexico border, including levels of inspection staff and their distribution at crossings for long-haul and commercial zone traffic. This is necessary because the number of Mexican carriers that will eventually apply for authority to conduct long-haul traffic, and the crossings that they will use, is unknown.

**Adequacy of Inspection Facilities.** During our May 25 through June 8, 2004 visits to 14 of the 27 commercial crossings, we found that dedicated inspection facilities at the crossings were sufficient. These facilities are used for the inspection of commercial trucks and drivers with authority to operate within the commercial zones. Dedicated inspection facilities include office space and space to inspect and place vehicles out of service. Based on FMCSA reports, and our follow-up work on issues from our last report, the remaining crossings with inspection facilities were also sufficient.

Our May 2003 report identified two border crossings, in Douglas and San Luis, Arizona, where a portion of the dedicated out-of-service space was not being used because the GSA had not completed improvements. During our latest visits, we determined that GSA had completed the improvements in Douglas and the out-of-service space was fully operational. GSA reported that improvements in San Luis were underway in July 2004.

We also previously reported that inspection space is available at the roadside at the Andrade, California, border crossing, which does not have an inspection facility. Andrade is a low-volume crossing through which about 2,450 commercial vehicles enter the United States annually. We found that out-of-service space is also available at a state inspection facility about 2 miles from the crossing. Based on reports from California state officials that we gathered during this audit, about 200 inspections occur at Andrade a year under an arrangement by which the Bureau of Customs and Border Protection detains commercial vehicles and calls the state inspectors. However, this arrangement has yet to be formalized in an agreement.

**Access to Databases.** During our visits to 14 selected commercial crossings, we found that inspectors could access Mexican and U.S. databases to verify CDLs,

license plates, authority to operate in the United States, and U.S. insurance coverage, although different procedures were used. Hand-held Personal Digital Assistants were used at numerous locations to access information on Mexican drivers and operating authority. In some instances, inspectors could access databases only by contacting dispatch or inspection facilities with electronic access. The majority of the personnel were aware of FMCSA's 1-800 telephone number to verify operating authority and insurance. However, 14 of 42 Federal and state personnel interviewed were not aware of this capacity until we advised them of the process.

**Conduct of Inspections.** Consultants<sup>20</sup> employed by the OIG to observe inspections conducted by Federal and state officials at the southern border reported that the inspections were generally conducted in accordance with North American Uniform Driver/Vehicle Inspection criteria. The inspections included examination of the driver, hours-of-service records, vehicle exterior, and vehicle undercarriage. However, at one of three locations where inspections were observed, inspectors did not complete reviews, when required, on the fifth wheel connector. The fifth wheel is an important connecting device that joins the tractor with the semi-trailer. Thus, inspections of motor carriers should examine this item for excessive movement. Our reviews of inspections were limited because the border was not open to long-haul traffic at the time of our audit. Should long-haul traffic materialize in the future, we will need to conduct more extensive reviews of inspections as they specifically relate to long-haul traffic.

### *Issues Remain to be Addressed to Ensure Full Implementation of Section 350*

While the basic safety infrastructure at the southern border remains in place, and the out-of-service rate for Mexican carriers has declined, FMCSA needs to address the following issues to ensure that the requirements of Section 350 are fully implemented.

- Providing adequate coverage of any future long-haul bus operations.
- Getting all states to adopt and consistently enforce operating authority violations.
- Ensuring WIMS are operable.
- Completing testing and ensuring that consistent data are provided to the system for monitoring Mexican drivers in the United States.

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<sup>20</sup> The qualifications of the consultants are described in Exhibit A.

**Bus Operations.** Commercial vehicles, by definition, include both trucks and buses, but buses are permitted to enter the United States at separate border crossings and at times when commercial trucks are restricted. Under current conditions, while buses are inspected at commercial truck crossings, Mexican bus companies granted long-haul authority could cross the border at locations and times where insufficient personnel and facilities are in place to verify commercial driver's licenses and inspect vehicles with expired CVSA decals—two key Section 350 requirements. Specifically:

- Internal reports prepared by FMCSA, in response to our May 2003 audit, stated that at 15 bus crossings at the southern border, FMCSA did not have adequate facilities or personnel to meet Section 350 requirements.
- During our visits to 17 of 31 border crossings identified by FMCSA, we observed 3 crossings, collocated with truck crossings, where buses could be subjected to inspections during all hours of operation, 4 crossings where bus traffic crossed but no bus inspections occurred, 5 crossings where inspectors were present an average of 2 days a week to conduct bus inspections, and 5 crossings where inspections were reportedly conducted during special operations occurring a couple of times a year.

The number of long-haul bus applicants is a small proportion of the total long-haul applicants and long-haul bus traffic represents a small proportion of current bus traffic at the border. As of September 2004, FMCSA had received applications from 6 bus companies seeking long-haul authority to operate a total of 21 motor coaches. This represents approximately 1 percent of the applicants for long-haul authority, as of September 2004.

The leasing of Mexican buses to U.S. carriers for operation in the United States and beyond the commercial zone is permitted at this time, and the degree to which buses operating in the United States under these conditions will elect to apply for long-haul authority is unknown. Based on reports from FMCSA, approximately 302,000 bus entries a year occur at 31 southern bus crossings. According to FMCSA officials, these primarily represent short-distance, transit-type crossings within the commercial zone, and they are not related to Section 350 compliance.

FMCSA officials informed us of other arrangements used within the border states to perform bus inspections. These alternatives included a voluntary compliance program established for Mexican bus companies to submit to inspections at selected sites, such as amusement parks, casinos, and a zoo. Officials informed us that this was more efficient because in most instances there were no passengers to unload.

Given issues such as the handling of passengers during inspections, we recognize that alternative methods for addressing Section 350 requirements for buses may be appropriate. Section 350 itself makes no specific mention of bus inspection procedures. However, before granting long-haul authority to buses, FMCSA should revise its policies to include procedures for inspecting long-haul buses across all four southern border states. Staffing and facility plans should also be revised, as necessary, to respond to the issues raised by FMCSA staff and our observations. In responding to the draft report, FMCSA stated that it will work closely with bus carriers granted long-haul authority to ensure compliance with safety regulations and the mandates of Section 350. FMCSA also reported that it is developing policy directives to ensure that bus inspections and driver checks are properly handled. According to FMCSA, approved plans and procedures will be in place by September 30, 2005.

**Enforcing Operating Authority.** FMCSA's August 2002 rule required state enforcement personnel to place a vehicle out of service when the vehicle is found to be operating without or outside its authority. To begin enforcing the rule, states needed to adopt the rule through the passage of legislation or by applying state statutes that allow the state to automatically implement the Federal rule. States enforce these requirements as a condition for receipt of Motor Carrier Safety Assistance Program funds, effective September 27, 2005.

As of June 2004, 46 states had adopted the rule and 5<sup>21</sup> had not (see Figure 2). Of the five, three expect to adopt the rule by early 2005. This is an increase of 15 states from the number reported as having adopted the rule in our May 2003 report, but several large states with significant commercial traffic still have not adopted the rule.

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<sup>21</sup> The five states are Alaska, Michigan, New Jersey, New York, and North Carolina. In this report, states refers to the 50 states and the District of Columbia.



- In Ohio, the State Patrol Enforcement Manager told us that enforcement would involve placing the motor carrier out of service, stating further that the lack of CVSA criteria was not an issue.
- In Louisiana, a state police official told us that the state legal staff had determined that CVSA criteria were not needed to enforce operating authority.
- In Florida, a state official said that they were not enforcing the authority because no one knows how to do it and training and guidance are needed.
- In Indiana, a state motor vehicle enforcement official told us that the state is not yet enforcing operating authority because it is awaiting further guidance from FMCSA. The official was also unclear about how to verify operating authority.

CVSA does not agree with the use of the term “out-of-service” in the August 2002 rule and it has not included violations of operating authority in the North American Inspection Standards developed by FMCSA in conjunction with CVSA. CVSA petitioned FMCSA in September 2003 seeking a change in terminology in the enforcement authority rule from “out of service” to “cease operations” for instances where commercial motor vehicles operate outside their permitted authority. According to CVSA, the term “out of service” is intended to refer to vehicles that “by reason of its mechanical condition or loading would likely cause an accident or breakdown.” According to CVSA, operating outside authority is not a condition constituting an imminent hazardous condition and should not be referred to as an out-of-service violation. The FMCSA had not responded to the petition as of December 9, 2004.

Our discussions with state officials showed that some states would not place vehicles out of service for operating authority violations because it was not part of the CVSA criteria, while other states determined that CVSA criteria were not needed to enforce operating authority. If this issue continues to present an obstacle to implementation of the August 2002 rule, FMCSA may need to take action to clarify that, notwithstanding CVSA’s view of when vehicles may be placed out of service, FMCSA, as the regulator, has determined that Mexican trucks operating in the United States without or outside their legal authority should be placed out of service.

In responding to our draft report FMCSA was concerned that our discussion of the operating authority issue suggested that Federal regulations are secondary to CVSA interpretations. We are not making that suggestion. FMCSA also requested that we modify our recommendation to emphasize full compliance with the out-of-service criteria in the August 2002 rule. Timely action on achieving full

state compliance with the August 2002 rule will establish nationwide controls against Mexican carriers that do not comply with Section 350 requirements.

It is difficult to determine the number of Mexican carriers operating outside their authority. Our analysis of FMCSA's database of inspections from September 2002 through May 2004 shows 197 inspections in non-border states involving 141 Mexican carriers who are not on the list of Mexican carriers authorized to operate outside the commercial zone. Although the data provides evidence of Mexican carriers operating illegally outside the commercial zones, we could not make reliable estimates as to the magnitude of the problem for two reasons:

- An unknown number of Mexican carriers may qualify to operate outside the commercial zone under an exception<sup>23</sup> allowing Mexican carriers to transit the United States, that is, travel through the United States to Canada, without dropping off or picking up goods.
- A number of the inspections or crashes could be inaccurately attributed to Mexican motor carriers. For example, after we identified a Mexican carrier with multiple crashes on record, FMCSA's research showed that the crashes were erroneously charged to that carrier. With over 2 million inspections and 100,000 crashes reported annually, additional errors of this type could occur. Our 2004 SafeStat report<sup>24</sup> estimated that errors occurred in approximately 13 percent of the crash transactions and 7 percent of the inspection transactions reported on interstate carriers for a 6-month period.

**Weigh-in-Motion Scales.** We confirmed that, as required by Section 350, WIMS are in place at the 10 highest volume crossings.<sup>25</sup> However, not all scales are working. These scales are used to screen vehicles with weight violations although a static scale must be used to take enforcement action against a carrier for being overweight. WIMS were operational at 6 of the 10 inspection facilities: Calexico and Otay Mesa in California; Eagle Pass, El Paso Bridge of the Americas, and Laredo World Trade Bridge in Texas; and Nogales in Arizona. However, WIMS were not working at four Texas inspection facilities: Pharr, Ysleta, Veterans, and Laredo Columbia. After our visit, state officials at Veterans and Laredo Columbia told us that WIMS had been repaired and were operational as of July 30, 2004. We were informed that the WIMS at the Pharr Crossing was repaired in August 2004 and that the WIMS at Ysleta was pending the construction of the state inspection facility at that location. All 14 crossings we visited had static scales.

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<sup>23</sup> 49 U.S.C. Section 13501 (This provision provides DOT's jurisdiction over motor carrier operating authority, but does not include transportation between two foreign countries.)

<sup>24</sup> OIG Report Number MH-2004-034, "Improvements Needed in the Safety Status Measurement System," February 13, 2004 (SafeStat).

<sup>25</sup> We reconfirmed through site visits to nine crossings and reports from the tenth crossing

**Safety Monitoring System for Drivers and Carriers.** We confirmed that FMCSA's automated safety monitoring system for Mexican carriers required by Section 350 prior to granting long-haul authority is operational. The automated system is designed to: (1) identify carriers requiring compliance reviews or letters of corrective action; (2) generate corrective action letters to send to the carriers; and (3) create a carrier history of violations and dates of corrective actions.

However, in the system for monitoring Mexican drivers, referred to as the 52<sup>nd</sup> state system, four states<sup>26</sup> had not yet tested the system to ensure that they could send Mexican driver convictions to the database. In addition, problems exist with populating the databases. For example, as of June 2004, California had provided only 19 convictions to the database, a situation state officials attributed to initial problems with the communications interface. Texas, by contrast, had over 4,000 convictions listed, although an FMCSA official said that the list included a number of non-Mexican foreign drivers. The correct operation of this monitoring system is important. It allows the United States to prevent Mexican drivers from entering the United States if they have incurred violations in the United States, which subjected them to disqualification rules applicable to U.S. Commercial Driver's License (CDL) holders. For example, two excessive speeding violations within a 3-year period are grounds for a 60-day disqualification. The system will also alert U.S. officials if Mexico has disqualified a Mexican driver's CDL.

## **ADDITIONAL CONCERNS**

Five additional areas do not pose specific Section 350 compliance issues, but should be dealt with should long-haul authority be granted to Mexican motor carriers.

**Data Quality Issues.** In our February 2004 report on the SafeStat System,<sup>27</sup> we reported on problems with the quality of the data in SafeStat that FMCSA used to rank motor carriers for review. Key among those problems were carriers reporting zero vehicles (referred to as power units) or zero drivers, and carriers that failed to update motor carrier census forms within the 2 years required by law. Errors in these data elements inhibit FMCSA's ability to identify carriers for compliance reviews and to identify high-risk carriers using SafeStat.

Based on an analysis of data from our prior audit, Mexican motor carriers show a greater number of these data quality problems, on average than U.S. carriers, although data quality issues are still a concern for U.S. carriers. For example:

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<sup>26</sup> Maine, Oregon, Pennsylvania, and Virginia.

<sup>27</sup> OIG Report Number MH-2004-034, "Improvements Needed in the Safety Status Measurement System," February 13, 2004.

- 67 percent of Mexican motor carriers had not submitted updated census forms, versus 42 percent for U.S. carriers.
- 51 percent of Mexican motor carriers reported having zero power units versus 10.3 percent for U.S. carriers.
- 52 percent of Mexican carriers showed zero drivers, as opposed to 14.5 percent for U.S. carriers.

Fortunately, in the case of Mexican carriers, FMCSA has an opportunity to correct these data errors during the pre-authority safety audits. FMCSA has recognized the need to obtain accurate data in its rules on the application process. Officials should take action during the application process for long-haul Mexican carriers to ensure that carriers provide complete and accurate information before FMCSA grants operating authority. FMCSA should also undertake education efforts to ensure that any future crashes involving Mexican carriers are accurately and completely reported. We have previously reported on problems with the completeness of reports to FMCSA on crashes, and FMCSA has taken action to improve data reporting and establish improved procedures for correcting data errors.

**Insurance Coverage.** Mexican carriers with operating authority limited to the commercial zone are not required to provide insurance data to the FMCSA database, but these commercial-zone carriers are required to carry proof of insurance. We observed that inspectors check this documentation during inspections. In contrast, Mexican carriers seeking future long-haul authority are required to meet the same requirements as U.S. carriers and provide proof of valid insurance with a company licensed in the United States for inclusion in FMCSA's database. The provision of insurance information to the database can be used to monitor whether insurance coverage for the carrier has been cancelled. Inspectors at the sites visited had access to the FMCSA database, which could be used to verify insurance coverage.

However, about 1,300 Mexican motor carriers previously granted approval to operate beyond the commercial zones are not required to provide insurance information to the FMCSA database, although they are required to carry evidence of insurance on the vehicle.<sup>28</sup> The 1,300 carriers may voluntarily provide this information, but our review of records showed that 98 percent had not. Those without insurance information on record included 19 of 20 carriers that received roadside inspections outside the four border states since September 2002. An FMCSA official stated that the 1,300 carriers would be required to re-apply for

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<sup>28</sup> These carriers, who are at least 55 percent U.S.-owned, were allowed to operate beyond the commercial zone as long as the drivers had certificates of insurance when operating the vehicles.

authority and provide insurance information when long-haul applications are processed. In our view, if the application process for long-haul carriers does not begin within 1 year, FMCSA should initiate action to require these carriers to provide this insurance information to the database.

Our discussions with non-governmental organizations and an insurance industry representative, as well as information on an enforcement investigation at one border state indicate that insurance companies may be reluctant to offer coverage for Mexican-based carriers because of a lack of information concerning the carriers' historical operations and financial position. FMCSA should be vigilant to ensure that carriers having difficulties acquiring insurance do not resort to fraudulent insurance.

**Drug and Alcohol Testing.** Section 350 states that FMCSA must conduct a safety audit of Mexican motor carriers seeking long-haul authority that includes verification that the carrier has a drug and alcohol testing program consistent with CFR, Title 49, Part 40. Because long-haul authority has not been granted to any Mexican motor carriers and because there have been no safety audits of long-haul applicant carriers, we could not assess the implementation of this requirement. We did find that safety audits conducted of Mexican carriers operating within the commercial zone do address drug and alcohol testing requirements. These requirements include the use of drug testing labs certified by HHS.

Mexico does not have a certified drug testing lab at this time. DOT officials informed us that until such a lab meets HHS certification standards, drug test collection facilities in Mexico are sending specimens to certified labs in the United States for processing. DOT's Office of Drug and Alcohol Policy and Compliance (ODAPC) is working with FMCSA and other DOT staff to develop an internal plan for addressing drug and alcohol testing issues, and a memorandum of understanding has been established with Mexico in the drug and alcohol testing area. DOT agencies, through inspections and audits, periodically review U.S. collection facilities to ensure compliance with established protocols. Collection facilities in Mexico are not reviewed by U.S. officials. The need for a certified lab in Mexico will intensify, and the need to have controls at collection sites will increase, as the number of Mexican motor carriers seeking long-haul authority increases. FMCSA should continue its work with ODAPC and other DOT staff to ensure that drug and alcohol testing issues, such as the establishment of sufficient controls at collection sites, are adequately addressed.

**Border Crossing Inspection Facilities.** Our May 2003 report identified five border crossings where the Bureau of Customs and Border Protection had moved or planned to move FMCSA's dedicated inspection and out-of-service spaces. Our 2004 visits found that plans to move inspection and out-of-service spaces for one border crossing in Texas were still in process, but the adequacy of the

replacement facilities was unclear. At the Eagle Pass crossing, the Bureau of Customs and Border Protection planned to displace the FMCSA inspection facility as part of the redesign of the Customs compound within the next year. Because the plans did not include new space for FMCSA inspections, FMCSA will have to work with GSA to ensure that a comparable inspection facility at Eagle Pass is constructed. This problem with ensuring adequate inspection space at Eagle Pass points to the general need for FMCSA to work with GSA to ensure the number of inspection and out-of-service spaces required in its 18 executed agreements and leases are provided and that any new inspection facility is comparable to current facilities. In responding to our draft report, FMCSA reported that it is continuing to work with GSA to meet its future needs at all border locations.

**Certification of Compliance with Federal Motor Vehicle Safety Standards.** FMCSA and the National Highway Traffic Safety Administration (NHTSA) have complementary responsibilities related to vehicle safety. FMCSA has authority to set safety requirements for motor carriers operating in interstate commerce. FMCSA's authority does not extend to setting standards for manufacturers of commercial motor vehicles to ensure that they contain necessary safety features. Such standards, known as Federal Motor Vehicle Safety Standards (FMVSS), are established by NHTSA under the National Traffic and Motor Vehicle Safety Act of 1966. Based on an interpretation letter issued by NHTSA in 1975, Canadian and Mexican motor carriers are responsible for complying with the FMVSS before operating commercial motor vehicles in the United States.

In March 2002, FMCSA proposed a rule to require carriers operating commercial motor vehicles in the United States to display a label that the vehicle was certified by the manufacturer as meeting all applicable Federal safety requirements. FMCSA noted that without the rule, uncertified commercial vehicles that did not meet all of the applicable safety standards may not be identified and subjected to effective enforcement action. As of November 29, 2004, the rule was under review by the Office of Management and Budget.

The proposed rule granted an exception for Canadian and Mexican motor carriers, which allows vehicles legally operating in the United States when the rule goes into effect to operate without meeting the certification requirement for 24 months. Commenters on the proposed FMCSA rule have argued that the exception violates the U.S. law on certification and that vehicles that are not certified as meeting U.S. production safety standards should not be permitted to enter the country. FMCSA's position is that the 24-month phase in period would be needed to allow motor carriers sufficient time to comply. FMCSA has also noted that even without the new rule all commercial motor vehicles operating in interstate commerce must comply with the requirements of the Federal Motor Carrier Safety regulations, including those that cross-reference the FMVSS. However, the proposed rule, if

adopted, would allow officials to cite Mexican motor carriers operating in the United States for failing to display documentation showing compliance with the FMVSS. While compliance with the FMVSS is not specifically cited in Section 350, it is important for the final rule to be issued if increasing numbers of Mexican commercial vehicles will be operating in the United States. The Conference Agreement to the FY 2005 Omnibus Appropriations Act included language prohibiting the use of funds to issue or implement a rule with the phase-in period.

## **RECOMMENDATIONS**

We recommend that the FMCSA Administrator:

1. Take action to meet congressional preconditions to opening the U.S.-Mexico border by:
  - a. Providing support to Department officials, as needed, to facilitate the establishment of a memorandum of understanding or some other agreement with Mexico on the conduct of on-site reviews.
  - b. Providing support to Department officials, as needed, to facilitate the establishment of an agreement with Mexico regarding equivalent requirements for Mexican hazardous material drivers. Additionally, FMCSA should not permit vehicles owned or leased by Mexican motor carriers to haul hazardous materials outside the commercial zone until such an agreement is in place.
2. Fully implement the requirements of Section 350 by:
  - a. Revising policies, procedures, staffing, and facility plans at the southern border to address the coverage of buses in a manner consistent with FMCSA policy on vehicle and driver inspections for commercial vehicles granted long-haul authority.
  - b. Ensuring that all states adopt and fully comply with the August 2002 rule on enforcing operating authority through (1) resolution of concerns about the use of out-of-service terminology in the enforcement authority rule, (2) guidance and/or training support to states on the implementation of the rule, and (3) continued work with the five states that have not adopted the rule.
  - c. Identifying actions and milestones needed to make all WIMS fully operable.
  - d. Ensuring that a comprehensive system for monitoring Mexican drivers is established by (1) setting milestones for all states to test the 52<sup>nd</sup> state

system and (2) reviewing reports on the data states provide to the 52<sup>nd</sup> state system to correct any inconsistencies in the data.

3. Take the following action to avoid future problems should long-haul authority be granted to Mexican carriers:
  - a. Establish procedures during pre-authority safety audits to ensure that Mexican motor carriers applying for long-haul authority provide up-to-date and accurate information on power units and drivers for inclusion in SafeStat calculations.
  - b. If the application process does not begin within one year, initiate action to require that those Mexican carriers presently allowed to operate outside the commercial zones provide insurance information to the FMCSA database.
  - c. Establish milestones, in conjunction with ODAPC and other DOT staff, to ensure that drug and alcohol testing issues, such as the establishment of sufficient controls at Mexican collection sites, are adequately addressed.

## **MANAGEMENT COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE**

We provided FMCSA a draft of this report on September 20, 2004. In its comments, provided on October 20, 2004 and December 10, 2004, FMCSA identified actions taken on each of the recommendations and stated that it would continue to deal with these issues and others as they are brought to its attention. However, FMCSA expressed concerns that the scope of the report was too broad. FMCSA stated that issues not specifically related to the two unmet preconditions to opening the border were not appropriate for the report and preferred that recommendations on these issues should be relegated to an appendix in the final report.

We appreciate FMCSA's comments and have revised the report to emphasize that recommendation 1 is associated with preconditions to opening the border that are not being met at this time. The report, however, continues to discuss other issues impacting full compliance with Section 350, as well as issues that will need attention should long-haul authority be granted to Mexican motor carriers.

FMCSA also provided technical comments on the draft report, which we incorporated into the final report, as appropriate. The full text of FMCSA's comments are provided in the Appendix. FMCSA's comments on specific recommendations and OIG responses are summarized below.

**FMCSA Comments.** For recommendation 1, which called for taking action to meet two unmet congressional preconditions to opening the U.S.-Mexico border, FMCSA commented that actions are underway. For on-site reviews (1.a.), FMCSA continues to work closely with Department and other officials to ensure that reviews will be conducted in a legal manner and with the knowledge of the appropriate Mexican government officials. For the agreement with Mexico regarding equivalent requirements for Mexican hazardous material drivers (1.b.), FMCSA stated that TSA will have the lead in the negotiations and FMCSA will continue to provide technical assistance to TSA, as requested, on the development of the agreement.

**OIG Response.** We consider FMCSA's comments on recommendation 1 to be responsive. We will follow up on the status of these agreements or understandings in our next review.

**FMCSA Comments.** For recommendation 2, regarding the need to close remaining gaps in meeting Section 350 requirements for bus operations, enforcing operating authority, WIMS, and a monitoring systems for Mexican drivers, FMCSA's comments discussed a range of actions.

- For bus operations (2.a.), FMCSA agreed to work closely with passenger carriers granted authority to operate beyond the commercial zones to ensure that the passenger-carrying commercial motor vehicles are in compliance with the mandates of Section 350. FMCSA will also meet with the Bureau of Customs and Border Protection to identify mutually agreeable operational procedures at the major long-haul bus crossings and continue to work with its state partners to inspect passenger carriers. The approved plans and procedures will be in place no later than the end of FY 2005.
- Regarding enforcement of operating authority (2.b.), FMCSA indicated that the August 2002 rule on enforcing operating authority is being implemented and that the recommendation should be changed to emphasize full compliance with the out-of-service terminology in the enforcement authority rule.
- On WIMS (2.c.), FMCSA commented that WIMS are funded; the states are responsible for maintaining WIMS; and the systems are to be operational except for routine maintenance, unforeseen breakdowns, or improvements to the inspection areas. FMCSA will require each of the three border states with WIMS to include a maintenance program for the system in its Commercial Vehicle Safety Plans.
- Regarding improvements to the system for monitoring Mexican drivers (2.d.), FMCSA commented that the 52<sup>nd</sup> system was fully implemented but, as with all data systems, FMCSA will look for ways to improve the quality and

timeliness of the data. Specifically, FMCSA state directors will meet with the states to explain and correct inconsistencies in the data by the end of FY 2005.

**OIG Response.** We consider FMCSA's comments on recommendation 2 to be responsive, and we will follow up on planned actions as appropriate. Based on FMCSA comments, we revised the recommendation on enforcing operating authority (2.b.) to emphasize the need for full state compliance with the August 2002 rule and request formal comment on this revised recommendation in response to the final report.

**FMCSA Comments.** For recommendation 3, regarding areas that do not pose specific Section 350 compliance issues, but which will need attention should long-haul authority be granted to Mexican motor carriers, FMCSA's comments addressed the three specific actions we recommended.

- Regarding the need to ensure that Mexican motor carriers provide up-to-date and accurate information for inclusion in SafeStat calculations (3.a.), FMCSA stated that information is being provided by Mexican carriers as part of the application process and will be verified by FMCSA during safety audits. Additionally, all Mexican carriers receiving authority to operate beyond the commercial zones are also subject to compliance reviews and safety monitoring for at least 18 months after receiving provisional authority to operate.
- On the issue of the provision of insurance information by Mexican carriers currently allowed to operate outside the commercial zone (3.b.), FMCSA commented that these carriers are required to carry proof of insurance and that the inclusion of information in the database issue is being addressed as FMCSA receives and begins to process the applications.
- On the drug and alcohol testing issue (3.c.), FMCSA stated that it will meet with ODAPC at least semiannually, and with appropriate Mexican government officials, in conjunction with ODACP, to ensure proper procedures are followed at the collection sites in Mexico. In addition, attention to controlled substance and alcohol testing requirements will be emphasized during required safety audits.

**OIG Response.** We consider the FMCSA comments on recommendation 3 to be responsive and we will follow up as needed in future reviews.

### **ACTION REQUIRED**

We request that FMCSA provide written comments within 30 days containing its formal response to recommendation 2.b., given the modifications made to that

recommendation in the final report. Other actions taken and planned by the Department are reasonable, subject to the follow-up requirements in DOT Order 8000.1C.

We appreciate the courtesies and cooperation provided by your staff during our review. If you have any questions concerning this report, please call me at (202) 366-1992 or Debra Ritt, Assistant Inspector General for Surface and Maritime Programs, at (202) 493-0331.

#

cc: The Secretary  
Deputy Secretary

## **EXHIBIT A. OBJECTIVES, SCOPE, AND METHODOLOGY**

### **OBJECTIVES**

The primary objective of this audit was to verify whether FMCSA continues to have the staff, facilities, equipment, and procedures in place to comply with provisions in the FY 2002 Transportation and Related Agencies Appropriations Act. Our specific audit objectives were to determine the extent to which FMCSA has complied with Section 350 (c) (1) (A) through (H) of the FY 2002 Act. Section 350 requires that:

- All new inspector positions funded under the Act be filled and the inspectors fully trained.
- Each inspector conducting on-site 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.
- Full safety compliance reviews are conducted before the carrier is granted permanent authority to operate beyond the commercial zones. This requirement cannot be met by transferring experienced inspectors from other parts of the United States to the U.S.-Mexico border, undermining the level of inspection coverage and safety elsewhere in the United States.
- Adequate capacity exist at each U.S.-Mexico border crossing used by Mexican long-haul motor carrier commercial vehicles to conduct a sufficient number of vehicle safety inspections and to accommodate vehicles placed out of service.
- A policy be implemented to ensure compliance with U.S. hours-of-service rules by Mexican long-haul carriers.
- Mexico's information infrastructure be sufficiently accurate, accessible, and integrated with that of U.S. law enforcement authorities to allow verification of the status and validity of CDLs, vehicle registrations, operating authority, and insurance of Mexican long-haul carriers while operating in the United States. Also, adequate telecommunications links exist at all U.S.-Mexico border crossings used by Mexican long-haul carriers and in mobile enforcement units

operating adjacent to the border to ensure easy and quick verification of this information.

- An accessible database exists containing sufficiently comprehensive data to allow for the safety monitoring of all Mexican motor carriers and drivers that apply for long-haul authority.
- Measures are in place to enable U.S. law enforcement authorities to ensure the effective enforcement and monitoring of license revocation and licensing procedures of Mexican motor carriers.

## **SCOPE AND METHODOLOGY**

We verified staffing, facility improvements (including WIMS), electronic access, and other actions taken by FMCSA and the states to comply with requirements established by the FY 2002 Act at 27 commercial border crossings along the U.S.-Mexico border.<sup>29</sup> We also observed bus crossings co-located with or adjacent to crossings.

We conducted verification work through comprehensive field reviews of 14 statistically selected crossings and through selected checks at the remaining 13 crossings. To select the 14 crossings for comprehensive reviews, we grouped the 27 crossings into 5 geographic regions and randomly selected 2 to 3 crossings from each region, with a larger proportion selected from crossings with the greatest number of truck entries in FY 2003. The 14 selected crossings cover approximately 90 percent of the 4.3 million truck entries in FY 2003.

To determine whether inspector, auditor, and investigator positions have been filled and whether those personnel have been trained, we analyzed lists of personnel selected to fill new positions since the prior audit, confirmed personnel on-board during site visits, and reviewed documentation on training completed. We also monitored training for new hires by examining records from the FMCSA training academy. To determine whether FMCSA staff was transferred to the southern commercial border crossings from other parts of the United States, we identified personnel hired since the prior audit and validated, through examination of personnel records, that the staff had not been transferred.

Through site visits, review of management reports, and contacts with GSA, FMCSA, and state officials, we determined whether dedicated inspection space,

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<sup>29</sup> We contacted officials at two crossings in Texas, Fabens/El Paso and Falcon Heights Dam, where commercial volume is not sufficient to merit full-time inspection coverage or dedicated inspection facilities. At these two crossings, we verified whether inspectors from the U.S. Customs and Border Protection were aware of the appropriate procedures to detain Mexican long-haul commercial vehicles and notify Federal safety inspectors.

## **Exhibit A. Objectives, Scope, and Methodology**

places for vehicles that were placed out-of-service, and office spaces were completed and in use. Three safety consultants employed by the OIG also observed inspections at three major border crossings to determine whether the inspections conformed to the North American Uniform Driver/Vehicle Inspection criteria.

We did not re-verify the accuracy of the Mexican CDLs and vehicle registration databases, which we verified in April 2002. To determine whether inspectors could access U.S. and Mexican databases, we conducted tests at Columbus, New Mexico, and 14 statistically selected commercial border crossings and with U.S. state law enforcement authorities (mobile units) operating along the U.S.-Mexico border. We observed a demonstration of the carrier safety monitoring system to validate its continued operation. In June 2002, we reported that the safety monitoring system for commercial drivers was operational and did not re-verify that system during this follow-up audit. However, we reviewed reports to identify the extent to which states had provided driver violations or test information to the contractor operating the system and to discuss inconsistencies in the population of the database. We reviewed and analyzed FMCSA's August 2002 operating authority rule, as well as related policies, and surveyed Federal and state authorities regarding implementation of the rule.

To determine FYs 1999 through 2001 out-of-service rates for inspections conducted on U.S. and Mexican carriers, we obtained statistics from a prior OIG report. To develop U.S., Canadian, and Mexican inspection records for FY 2002 and FY 2003, we obtained and analyzed data from the Motor Carrier Management Information System (MCMIS). This analysis included the matching of inspection records to the MCMIS census table and to the address table with the current physical address for the carrier. The snapshot of data was taken on May 11, 2004 and only active and inactive interstate and intrastate hazardous material (hazmat) carriers were selected for analysis. To determine Mexican inspections in non-border states, we included inspection records since September 27, 2002 and excluded inspection records in the states of California, Texas, New Mexico, and Arizona. Our statistician conducted a T-test with SPSS (Statistical Package for the Social Sciences) software to determine if the difference between the FY 2003 overall U.S. out-of-service rate and the Mexican out-of-service rate was statistically significant when compared with variations across U.S. states for inspections of U.S. vehicles. The difference in our inspection analysis compared to the analysis performed by the Volpe National Transportation Center may be attributed to a more recent snapshot, selection based on fiscal year versus calendar year and the inclusion of inactive carriers.

In addition, we interviewed FMCSA officials concerning the need for and impediments to reaching an agreement with Mexico allowing on-site safety

#### **Exhibit A. Objectives, Scope, and Methodology**

examinations. We reviewed regulations and interviewed Office of the Secretary (OST), FMCSA, and TSA officials concerning the need for an agreement with Mexico concerning hazardous material requirements for Mexican drivers of hazardous materials. This analysis focused on new background requirements for hazardous materials endorsements brought about by the USA PATRIOT Act. We did not examine the basis for the 1991 agreement between the United States and Mexico that CDLs in each country would be treated as equivalent or assess the impact, if any, of other changes in U.S. CDL requirements since 1991. U.S. states have until September 2005 to implement a number of new CDL requirements contained in the Motor Carrier Safety Improvement Act of 1999.

We analyzed licensing and insurance databases and compared them to lists of carriers authorized to operate outside the commercial zone and discussed the requirements for disclosure of insurance coverage with FMCSA staff and outside parties. We discussed the need for FMCSA enforcement of Federal Motor Vehicle Safety Standards with FMCSA and outside parties.

We used computer-generated data from FMCSA's MCMIS to develop descriptive statistics of motor carriers and motor carrier inspection activity and to identify Mexican motor carriers operating outside the border states. We did not assess the general and application controls for this system. We did, however, conduct selected tests of the data that included checks to ensure the data we analyzed accurately reflected the information contained in FMCSA's database at the time of the analysis. Also, to a reasonable extent, we used reports generated by the Volpe Transportation System Center and data queries to cross-check our results to identify material differences. The external data provided do not provide the sole support for our objectives; therefore, we consider the data presented on inspection out-of-service rates to be sufficiently reliable for the corroborative purposes for which it was used. As detailed in the report, we could not make reliable estimates as to the magnitude of Mexican motor carriers operating outside the border states because of the unknown number of Mexican carriers that may qualify to operate outside the commercial zone when traveling directly to Canada and given error rates in inspection and crash data obtained during prior audit work. Information on the quality of data provided by Mexican motor carriers was obtained by analyzing data obtained for our audit on "Improvement Needed in the Motor Carrier Safety Status Measurement System," Report Number MH-2004-034, February 13, 2004.

The OIG retained three consultants with experience in motor carrier safety and inspections. These individuals have an average of 30 years of law enforcement and vehicle inspection experience. They have held executive positions in motor safety organizations and participated on various state committees on matters concerning motor carriers. Also, they have developed or administered training

## **Exhibit A. Objectives, Scope, and Methodology**

programs on vehicle safety inspections, North American Standard level 1 inspections, hazardous materials, drug recognition, uniform fine schedule, civil penalty assessment procedures, and covert defect verification programs.

We conducted the audit from May through September 2004 in accordance with Government Auditing Standards, as prescribed by the Comptroller General of the United States and included tests of internal controls as were considered necessary.

## **EXHIBIT B. PRIOR AUDIT COVERAGE**

**OIG Report Number MH-2003-041, Follow-up Audit on the Implementation of Commercial Vehicle Safety Requirements at the U.S.-Mexico Border**, May 16, 2003. We reported that FMCSA had substantially completed the actions necessary to meet Section 350 requirements, although the report noted several incomplete items in need of additional action. Specifically, FMCSA needed to fill 3 enforcement personnel vacancies to reach the target of 274; complete an agreement at one of 25 border crossings to permit detaining of commercial vehicles; and ensure states adopt FMCSA's rule authorizing their enforcement personnel to take action when encountering a vehicle operating without authority.

**OIG Report Number MH-2002-094, Implementation of Commercial Vehicle Safety Requirements at the U.S.- Mexico Border**, June 25, 2002. We reported that FMCSA made substantial progress toward meeting the FY 2002 Transportation and Related Agencies Appropriations Act's requirements to hire and train inspectors, establish inspection facilities, and develop safety processes and procedures for Mexican long-haul carriers. FMCSA proposed to complete, within 60 days, those actions that were in process and planned to meet the Act's requirements, except the hiring and training of safety investigators and training supervisors.

**Government Accountability Office (formerly General Accounting Office) Report Number GAO-02-238, North American Free Trade Agreement: Coordinate Operational Plan Needed to Ensure Mexican Trucks' Compliance with U.S. Standards**, December 21, 2001. GAO found that the DOT did not have a fully developed or approved operational plan in conjunction with border states to ensure that Mexican-domiciled carriers comply with U.S. safety standards.

**OIG Report Number MH-2001-096, Motor Carrier Safety at the U.S.-Mexico Border**, September 21, 2001. We recommended that FMCSA strengthen safety controls at the border in the areas of staffing, safety reviews and inspections, enforcement, facilities, rulemakings, and outreach.

**OIG Report Number MH-2001-059, Status of Implementing the North American Free Trade Agreement's Cross-Border Trucking Provisions**, May 8, 2001. We found that (1) the percentage of Mexican trucks removed from service because of serious safety violations declined from 44 percent in FY 1997 to 36 percent in FY 2000; (2) FMCSA increased the authorized number of inspectors at the southern border from 13 in FY 1998 to 60 in FY 2001, and requested 80 additional enforcement personnel in its FY 2002 budget request; and

(3) there had been few needed improvements to inspection facilities used by Federal and state commercial vehicle inspectors at border crossings.

**OIG Report Number TR-2000-013, Mexico-Domiciled Motor Carriers**, November 4, 1999 We found that Mexico-domiciled motor carriers were operating improperly in the U.S. and violating U.S. statutes either by not obtaining operating authority or by operating beyond the scope of their authority.

**OIG Report Number TR-1999-034, Motor Carrier Safety Program for Commercial Trucks at U.S. Borders**, December 28, 1998. We found that the actions in preparation for opening the U.S.-Mexico border to Mexican long-haul trucks did not provide reasonable assurance in the near term that trucks enter the U.S. will comply with U.S. safety regulations. With the exception of California, neither the Federal Highway Administration nor the states' plans provided for an adequate presence of inspectors at border crossings for trucks currently operating in the commercial zones.

FMCSA has taken action to satisfy the majority of the recommendations cited in the above reports.

## **EXHIBIT C. ACTIVITIES VISITED OR CONTACTED**

### **UNITED STATES DEPARTMENT OF TRANSPORTATION**

Office of the Secretary, Washington, DC  
 Office of General Counsel  
 Office of International Transportation and Trade

Bureau of Transportation Statistics

### **FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION (FMCSA)**

Headquarters, Washington, DC

State FMCSA Division Offices

Phoenix, Arizona (visited)  
 Sacramento, California (visited)  
 Albuquerque, New Mexico (visited)  
 Austin, Texas (visited)  
 San Diego, California, Transborder Office (visited)  
 All state FMCSA offices

FMCSA Audit Offices

Douglas, Arizona  
 Nogales, Arizona  
 Calexico, California  
 San Diego, California  
 Brownsville, Texas  
 Eagle Pass, Texas  
 El Paso, Texas  
 Laredo, Texas

FMCSA Training Offices

National Training Center, Arlington, Virginia

### **UNITED STATES DEPARTMENT OF HOMELAND SECURITY**

Office of Inspector General, Washington, DC  
 Transportation Security Administration, Washington, DC  
 United States Customs and Border Protection, Washington, DC  
 Office of Field Operations  
 Office of Policy and Planning

Arizona Ports of Entry

Douglas  
 Lukeville  
 Naco  
 Nogales  
 San Luis  
 Sasabe

California Ports of Entry

Andrade, Winterhaven  
 Calexico  
 Otay Mesa  
 San Ysidro  
 Tecate

New Mexico Ports of Entry

Columbus  
 Santa Teresa

Texas Ports of Entry

Columbia, Laredo  
 Del Rio  
 Eagle Pass  
 El Paso Bridge of the Americas, El Paso  
 El Paso Paso del Norte, El Paso  
 El Paso Ysleta, El Paso  
 Fabens  
 Hidalgo-Reynosa, Hidalgo  
 Lincoln-Juarez, Laredo  
 Los Indios, Brownsville  
 Pharr  
 Presidio  
 Progreso  
 Falcon Heights Dam, Falcon  
 Roma  
 Veterans, Brownsville  
 World Trade Bridge, Laredo

**GENERAL SERVICES ADMINISTRATION**

Headquarters, Washington, DC  
 Border Stations Center, Fort Worth, Texas

**Exhibit C. Activities Visited or Contacted**

**STATE OFFICES**

## Arizona

Department of Public Safety, Commercial Vehicle Enforcement Bureau,  
Phoenix

Department of Transportation, Motor Vehicle Division, Phoenix

## California

California Highway Patrol, Commercial Vehicle Section, Sacramento

## New Mexico

Department of Public Safety, Motor Transportation Division, Santa Teresa

## Texas

Department of Public Safety, Commercial Vehicle Enforcement, Austin

**NON-GOVERNMENT**

Commercial Vehicle Safety Alliance, Washington, DC

TML Information Services, Forest Hills, New York

Public Citizen, Washington, DC

Advocates for Highway and Auto Safety, Washington, DC

American Insurance Association, Washington, DC

American Trucking Associations, Alexandria, Virginia

## EXHIBIT D. TEXT OF SECTION 350

SEC. 350. SAFETY OF CROSS-BORDER TRUCKING BETWEEN UNITED STATES AND MEXICO. (a) No funds limited or appropriated in this Act may be obligated or expended for the review or processing of an application by a Mexican motor carrier for authority to operate beyond United States municipalities and commercial zones on the United States-Mexico border until the Federal Motor Carrier Safety Administration—

(1)(A) requires a safety examination of such motor carrier to be performed before the carrier is granted conditional operating authority to operate beyond United States municipalities and commercial zones on the United States-Mexico border;

(B) requires the safety examination to include--

(i) verification of available performance data and safety management programs;

(ii) verification of a drug and alcohol testing program consistent with part 40 of title 49, Code of Federal Regulations;

(iii) verification of that motor carrier's system of compliance with hours-of-service rules, including hours-of-service records;

(iv) verification of proof of insurance;

(v) a review of available data concerning that motor carrier's safety history, and other information necessary to determine the carrier's preparedness to comply with Federal Motor Carrier Safety rules and regulations and Hazardous Materials rules and regulations;

(vi) an inspection of that Mexican motor carrier's commercial vehicles to be used under such operating authority, if any such commercial vehicles have not received a decal from the inspection required in subsection (a)(5);

(vii) an evaluation of that motor carrier's safety inspection, maintenance, and repair facilities or management systems, including verification of records of periodic vehicle inspections;

(viii) verification of drivers' qualifications, including a confirmation of the validity of the Licencia de Federal de Conductor of each driver of that motor carrier who will be operating under such authority; and

(ix) an interview with officials of that motor carrier to review safety management controls and evaluate any written safety oversight policies and practices.

(C) requires that--

(i) Mexican motor carriers with three or fewer commercial vehicles need not undergo on-site safety examination; however 50 percent of all safety examinations of all Mexican motor carriers shall be conducted onsite; and

(ii) such on-site inspections shall cover at least 50 percent of estimated truck traffic in any year.

(2) requires a full safety compliance review of the carrier consistent with the safety fitness evaluation procedures set forth in part 385 of title 49, Code of Federal Regulations, and gives the motor carrier a satisfactory rating, before the carrier is granted permanent operating authority to operate beyond United States municipalities and commercial zones on the United States-Mexico border, and requires that any such safety compliance review take place within 18 months of that motor carrier being granted conditional operating authority, provided that—

(A) Mexican motor carriers with three or fewer commercial vehicles need not undergo onsite compliance review; however 50 percent of all compliance reviews of all Mexican motor carriers shall be conducted on-site; and

(B) any Mexican motor carrier with 4 or more commercial vehicles that did not undergo an on-site safety exam under (a)(1)(C), shall undergo an on-site safety compliance review under this section.

(3) 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;

(A) for every such vehicle carrying a placardable quantity of hazardous materials;

(B) whenever the inspection required in subsection (a)(5) is performed; and

(C) randomly for other Mexican motor carrier commercial vehicles, but in no case less than 50 percent of all other such commercial vehicles.

(4) gives a distinctive Department of Transportation number to each Mexican motor carrier operating beyond the commercial zone to assist inspectors in enforcing motor carrier safety regulations including hours-of-service rules under part 395 of title 49, Code of Federal Regulations;

(5) requires, with the exception of Mexican motor carriers that have been granted permanent operating authority for three consecutive years—

(A) 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, by certified inspectors in accordance with the requirements for a Level I Inspection under the criteria of the North American Standard Inspection (as defined in section 350.105 of title 49, Code of Federal Regulations), including examination of the driver, vehicle exterior and vehicle under-carriage;

(B) a Commercial Vehicle Safety Alliance decal to be affixed to each such commercial vehicle upon completion of the inspection required by clause (A) or a re-inspection if the vehicle has met the criteria for the Level I inspection; and

(C) that any such decal, when affixed, expire at the end of a period of not more than 90 days, but nothing in this paragraph shall be construed to preclude the Administration from

requiring reinspection of a vehicle bearing a valid inspection decal or from requiring that such a decal be removed when a certified Federal or State inspector determines that such a vehicle has a safety violation subsequent to the inspection for which the decal was granted.

(6) requires State inspectors who detect violations of Federal motor carrier safety laws or regulations to enforce them or notify Federal authorities of such violations;

(7)(A) equips all United States-Mexico commercial border crossings with scales suitable for enforcement action; equips 5 of the 10 such crossings that have the highest volume of commercial vehicle traffic with weigh-in-motion (WIM) systems; ensures that the remaining 5 such border crossings are equipped within 12 months; requires inspectors to verify the weight of each Mexican motor carrier commercial vehicle entering the United States at said WIM equipped high volume border crossings; and

(B) initiates a study to determine which other crossings should also be equipped with weigh-in-motion systems;

(8) the Federal Motor Carrier Safety Administration has implemented a policy to ensure that no Mexican motor carrier will be granted authority to operate beyond United States municipalities and commercial zones on the United States-Mexico border unless that carrier provides proof of valid insurance with an insurance company licensed in the United States;

(9) 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 vehicle safety inspections and to accommodate vehicles placed out-of-service as a result of said inspections.

(10) publishes—

(A) interim final regulations under section 210(b) of the Motor Carrier Safety Improvement Act of 1999 (49 U.S.C. 31144 note) that establish minimum requirements for motor carriers, including foreign motor carriers, to ensure they are

knowledgeable about Federal safety standards, that may include the administration of a proficiency examination;

(B) interim final regulations under section 31148 of title 49, United States Code, that implement measures to improve training and provide for the certification of motor carrier safety auditors;

(C) a policy under sections 218(a) and (b) of that Act (49 U.S.C. 31133 note) establishing standards for the determination of the appropriate number of Federal and State motor carrier inspectors for the United States-Mexico border;

(D) a policy under section 219(d) of that Act (49 U.S.C. 14901 note) that prohibits foreign motor carriers from leasing vehicles to another carrier to transport products to the United States while the lessor is subject to a suspension, restriction, or limitation on its right to operate in the United States; and

(E) a policy under section 219(a) of that Act (49 U.S.C. 14901 note) that prohibits foreign motor carriers from operating in the United States that is found to have operated illegally in the United States.

(b) No vehicles owned or leased by a Mexican motor carrier and carrying hazardous materials in a placardable quantity may be permitted to operate beyond a United States municipality or commercial zone until the United States has completed an agreement with the Government of Mexico which ensures that drivers of such vehicles carrying such placardable quantities of hazardous materials meet substantially the same requirements as United States drivers carrying such materials.

(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.

(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.

(e) For purposes of this section, the term 'Mexican motor carrier' shall be defined as a Mexico-domiciled motor carrier operating beyond United States municipalities and commercial zones on the United States-Mexico border.

(f) In addition to amounts otherwise made available in this Act, to be derived from the Highway Trust Fund, there is hereby appropriated to the Federal Motor Carrier Safety Administration, \$25,866,000 for the salary, expense, and capital costs associated with the requirements of this section.

## APPENDIX. MANAGEMENT COMMENTS



# Memorandum

U.S. Department  
Of Transportation  
Federal Motor Carrier  
Safety Administration

Subject: **INFORMATION:** Draft Report on the Follow-up Audit  
of the Implementation of the North American Free Trade  
Agreement's Cross-Border Trucking Provisions  
Project Number: 04M3011M000

Date: OCT 20 2004

From: Annette M. Sandberg  
Administrator

In Reply Refer To: MC-P

To: Alexis M. Stefani  
Principal Assistant Inspector General for  
Auditing and Evaluation (Attn: JA-40)

This memorandum is in response to your September 20, 2004 draft report regarding the Office of Inspector General (OIG) Follow-up Audit of the Implementation of the North American Free Trade Agreement's Cross-Border Trucking Provisions. The primary objective of the audit was to verify whether the Federal Motor Carrier Safety Administration (FMCSA) has the staff, facilities, equipment and procedures in place to comply with the provisions in Section 350 of the FY 2002 Transportation and Related Agencies Appropriations Act (FY 2002 Act) that are to be reviewed annually by OIG. In addition, you expanded your review by identifying any impediments to conducting reviews in Mexico and assessing the applicability of the hazardous material provisions as they relate to Section 350. You also examined any additional issues that came to your attention which could present safety issues for implementation of the North American Free Trade Agreement (NAFTA). We have reviewed the report and offer the following comments and responses to the specific recommendations contained in the report.

### Comments

The report is very comprehensive and documents that FMCSA has met the mandates of the provisions of Section 350 of the FY 2002 Act. Your investigation of actions we have taken that go beyond the scope of Section 350 provisions indicates that FMCSA has exceeded these mandates. Along with its State partners, FMCSA will continue to accelerate its activities along the southern border as well as throughout the United States to ensure that all commercial motor carriers, drivers, and vehicles meet the Federal Motor Carrier Safety Regulations (FMCSRs), regardless of country of origin.

You identified several additional issues which are not specifically related to meeting the Congressional preconditions to opening the United States – Mexico border, and we believe such issues are not appropriate for this report. Nevertheless, we are providing you with the actions we have taken to date for each of your recommendations and we will continue to deal with these and

other issues as they are brought to our attention. However, because they do not affect the preconditions to opening the border, draft recommendations 2 and 3 should be relegated to an appendix to the final report.

The following section-specific comments will, we believe, improve the report and we recommend you incorporate them.

Page 3 -- last paragraph: Were the "expert" reviews of inspections conducted by certified inspectors (in accordance with standards)? If not, we request removing the word "expert."

Page 4 -- second paragraph: The report indicates FMCSA cannot grant authority to "any" Mexican motor carrier until the Section 350 requirement of 50 percent onsite audits is memorialized. Because Section 350 itself exempts carriers with three or fewer trucks from the onsite audits, the word "any" is an overstatement, at the very least. We suggest the following be added after the second sentence in this paragraph to make it clear carriers with three or fewer trucks are exempt from the onsite audits: "However, Section 350 does not require an onsite compliance review for Mexican carriers with three or fewer commercial vehicles."

Page 4 -- third paragraph: The report language confuses hazardous materials (HM) background checks on Mexican *drivers* with grants of operating authority to Mexican *carriers*. The report should make clear that FMCSA may grant operating authority to Mexican carriers hauling hazardous materials even if Mexican vehicles owned or leased by a Mexican motor carrier are restricted from hauling hazardous materials outside the commercial zone until an agreement is in place ensuring that the drivers of such vehicles meet the same requirements as United States drivers.

Page 5 -- last paragraph: The report indicates FMCSA has "suggested" means of handling bus inspections. This language should be clarified to show that FMCSA officials discussed current methods used for inspecting buses that could be applied to buses granted long-haul authority in the future. We recommend the language be changed to "Section 350 provides no specific guidance regarding buses; however, FMCSA officials are developing policy directives that will ensure bus inspections and driver checks are properly handled."

Page 6 -- second-to-last paragraph: The report seems to suggest that Federal regulations on "out-of-service" are secondary to Commercial Vehicle Safety Alliance (CVSA) interpretations. Rather than recommending that FMCSA address these concerns about terminology, we suggest OIG simply recommend that FMCSA work with the remaining States toward full compliance with Federal regulations.

Page 9 -- second paragraph: The General Services Administration's (GSA) work on the design of the new facilities at Eagle Pass has been temporarily suspended. The design work will resume in 2005, and completion of construction is scheduled for late 2006 or early 2007. GSA is aware of FMCSA's needs and FMCSA will continue to work with GSA to ensure that comparable inspection facilities are available at Eagle Pass. Moreover, FMCSA continues to work with GSA to ensure that adequate facilities are available at *all* crossings, including Eagle Pass. In addition, FMCSA is working with GSA to ensure that FMCSA's needs are factored into GSA's future

plans at all the ports, as it develops long-term housing plans and constructs new facilities. We recommend the final report reflect this work.

Page 10 -- second-to-last paragraph: The report language repeats the inaccurate statement regarding grants to “any” Mexican carriers, noted above.

Page 11: We recommend this page be rewritten to accurately reflect the Transportation Security Administration (TSA) and FMCSA roles on Patriot Act background checks. It is critical that TSA is properly shown as the lead for any background check Memorandum of Understanding and for the conducting of those checks (as you note on page 4 of the report).

Page 17 -- first paragraph: The 302,000 bus crossing figure should be explained. As discussed with OIG staff, this number primarily represents short-distance, transit-type crossings within the commercial zone, not related to Section 350 compliance. Up to the January 2003 Ninth Circuit ruling, we had applications for operating authority from six Mexico-domiciled passenger carriers, representing a total of 21 buses and two vans. Moreover, we will continue our strong emphasis on bus safety enforcement.

Page 17 -- second-to-last paragraph first line: The word “authorized” should be replaced by “required.”

Page 19 -- first paragraph after bullets: Discussion of the CVSA petition is irrelevant and should be deleted from the final report. The petition has nothing to do with the States' ability to place carriers out of service under 49 CFR 392.9a, which is independent of the CVSA out-of-service criteria.

Page 19 -- bottom of page, first bullet: The statement that FMCSA rules allow Mexican carriers to transport goods to Canada (and the accompanying footnote citing the rules) is incorrect. We have no statutory authority over Mexico-Canada traffic traveling through the United States under the Interstate Commerce Commission Termination Act (ICCTA), although we do have authority on the safety side. Therefore, the ICCTA--not FMCSA rules--should be cited. Furthermore, the report language should mention that 49 CFR 387.321 requires for-hire carriers traversing the United States in foreign commerce to file evidence of insurance with FMCSA.

Page 20 -- Weigh-In-Motion (WIM) Scales: See response to Recommendation 2.c. below.

Page 22 -- end of first paragraph: The report language should explain that although commercial zone carriers are not required to provide insurance data to FMCSA's database, such carriers must *carry* evidence of financial responsibility on their vehicles. (49 CFR 387.7(f))

Page 22 -- third paragraph: We believe the fact that carriers may not *voluntarily* provide non-required information is irrelevant, and therefore, should be deleted from the report. Moreover, the final report should reflect that all Mexican carriers, not just those in the Commercial Zone, need to carry evidence of insurance on the vehicle. Hence, there are currently ways of monitoring the 1,300 beyond-the-zone United States-owned Mexican carriers.

Page 23 -- second paragraph: FMCSA continues to work with GSA to ensure the number of inspection and out-of-service spaces required in its 18 executed agreements and leases are provided and that any new inspection facility is comparable to current facilities.

Page 24 -- first line of second paragraph: The report language should explain what "certain vehicles" means.

#### **Responses to Specific Recommendations**

**Recommendation 1a.:** Take action to meet congressional preconditions to opening the U.S.-Mexico border by providing support to Department officials, as needed, to facilitate the establishment of a Memorandum of Understanding or some other agreement with Mexico on the conduct of on-site reviews.

**Response:** Action underway. FMCSA continues to work closely with Departmental and other officials to ensure that the onsite reviews will be conducted in a legal manner and with the knowledge of the appropriate Mexican Government officials.

**Recommendation 1b.:** Take action to meet congressional preconditions to opening the U.S.-Mexico border by providing support to Department officials, as needed, to facilitate the establishment of an agreement with Mexico regarding equivalent requirements for Mexican hazardous material carriers. Additionally, FMCSA should not permit vehicles owned or leased by Mexican motor carriers to haul hazardous materials outside the commercial zone until such an agreement is in place.

**Response:** Action underway. As noted in the third paragraph on page 4 of the report, TSA will have the lead in negotiating an agreement with Mexico on this matter. FMCSA continues to provide technical assistance to TSA, as requested, on the development of the agreement. In that same paragraph, the second sentence should be revised to read, "Given these new regulations... before FMCSA can permit a vehicle owned or leased by a Mexican motor carrier and operated by a Mexican driver to haul hazardous materials outside the commercial zones." In addition, the language in the recommendation itself mischaracterizes Section 350 by referring to hazardous materials *carriers* instead of drivers.

**Recommendation 2a.:** Fully implement the requirements of Section 350 by revising policies, procedures, staffing, and facility plans at the southern border to address the coverage of buses in a manner consistent with FMCSA policy on vehicle and driver inspections for commercial vehicles granted long-haul authority.

**Response:** FMCSA, with its State partners, continues to inspect passenger carriers operating across the border and has developed a plan to enhance these inspections at the major passenger carrier crossings. Buses are routinely inspected at destination locations through strike force operations and at points of entry while the passengers are being cleared by the Bureau of Customs and Border Protection. FMCSA will work closely with the passenger carriers granted authority to operate beyond the commercial zones to ensure that passenger-carrying commercial

motor vehicles that operate beyond the commercial zones are in compliance with the Federal Motor Carrier Safety Regulations and the mandates of Section 350 of the FY 2002 Act.

**Recommendation 2b.:** Fully implement the requirements of Section 350 by effectively implementing the August 2002 rule on enforcing operating authority through (1) resolution of concerns about the use of out of service terminology in the enforcement authority rule, (2) guidance and/or training support to States on the implementation of the rule, and (3) continued work with the five States that have not adopted the rule to ensure that rules concerning operating authority are enforced.

**Response:** The August 2002 rule is being implemented. We recommend that the language be changed to read, “authority through (1) *achievement of full compliance with the out of service ....*”

**Recommendation 2c.:** Fully implement the requirements of Section 350 by identifying actions and milestones needed to make all WIMS fully operable.

**Response:** FMCSA funded the deployment of the WIMs at the 10 busiest commercial cargo crossings with funds appropriated in FY 2002. The States are responsible for maintaining these WIMs and—except for routine maintenance, unforeseen breakdowns or improvements to the inspection areas—the WIMs are to be operational. In addition, there are platform scales at all the WIM sites to provide redundant weighing, if necessary, by the States.

**Recommendation 2d.:** Fully implement the requirements of Section 350 by ensuring that a comprehensive system for monitoring Mexican drivers is established by (1) setting milestones for all States to test the 52<sup>nd</sup> state system and (2) reviewing reports on the data States provide to the 52<sup>nd</sup> state system to correct any inconsistencies in the data.

**Response:** FMCSA fully implemented the 52<sup>nd</sup> State system. As with all its information systems, FMCSA continually looks for ways to improve the quality and timeliness of the data. FMCSA will notify the States to explain and/or correct and inconsistencies in the data.

**Recommendation 3a.:** Take the following action to avoid future problems should long-haul authority be granted to Mexican carriers: Establish procedures during pre-authority safety audits to ensure that Mexican motor carriers applying for long-haul authority provide up-to-date and accurate information on power units and drivers for inclusion in SafeStat calculations.

**Response:** This information is being provided by Mexican carriers as part of the application and will be verified by FMCSA during the required safety audit. All Mexican carriers receiving authority to operate beyond the commercial zones are also subject to a compliance review and safety monitoring system for at least 18 months after receiving provisional authority to operate, during which data can be corrected and updated.

**Recommendation 3b.:** Take the following action to avoid future problems should long-haul authority be granted to Mexican carriers: If the application process does not begin within one

year, initiate action to require that those Mexican carriers presently allowed to operate outside the commercial zones provide insurance information to the FMCSA database.

**Response:** This issue is being addressed as FMCSA receives applications from, and begins to process the applications for, these United States-owned, Mexico-domiciled carriers.

**Recommendation 3c.:** Take the following action to avoid future problems should long-haul authority be granted to Mexican carriers: Establish milestones, in conjunction with ODAPC and other DOT staff, to ensure that drug and alcohol testing issues, such as the establishment of sufficient controls at Mexican collection sites, are adequately addressed.

**Response:** FMCSA continues to work with the Office of Drug and Alcohol Policy Compliance (ODAPC) and aggressively checks carrier compliance with all the FMCSRs, including the controlled substance and alcohol testing and use requirements.

We look forward to working with OIG in continuing to improve motor vehicle safety—both at the borders and across the country. Please do not hesitate to contact me or Bill Paden, Associate Administrator for Enforcement and Program Delivery, at (202) 366-2525, if any further information or clarification is needed.



# Memorandum

U.S. Department  
Of Transportation  
Federal Motor Carrier  
Safety Administration

Subject: **INFORMATION:** Draft Report on the Follow-up Audit  
of the Implementation of the North American Free Trade  
Agreement's Cross-Border Trucking Provisions  
Project Number: 04M3011M000

Date: DEC 10 2004

From: Annette M. Sandberg  
Administrator

In Reply Refer To: MC-P

To: Alexis M. Stefani  
Principal Assistant Inspector General for  
Auditing and Evaluation (Attn: JA-40)

This memorandum provides supplemental comments on your September 20, 2004 draft report, *Follow-up Audit of the Implementation of the North American Free Trade Agreement's (NAFTA) Cross-Border Trucking Provisions*. These comments represent clarifications of our responses to five of the nine recommendations outlined in the report, transmitted by our October 20, 2004, memorandum. This material is consistent with recent discussions between our two staffs.

**Recommendation 2a.:** Fully implement the requirements of Section 350 by revising policies, procedures, staffing, and facility plans at the southern border to address the coverage of buses in a manner consistent with FMCSA policy on vehicle and driver inspections for commercial vehicles granted long-haul authority.

**Response:** FMCSA, with its State partners, continues to inspect passenger carriers operating across the border and has in place a plan to enhance these inspections at the major passenger carrier crossings. Buses are routinely inspected at destination locations through strike force operations and at points of entry while the passengers are being cleared by the Bureau of Customs and Border Protection (CBP). FMCSA will meet with CBP to identify mutually agreeable operational procedures at the major long-haul bus crossings to ensure the Section 350 requirements are met. In addition, FMCSA will work closely with the passenger carriers granted authority to operate beyond the commercial zones to ensure that passenger-carrying commercial motor vehicles that operate beyond the commercial zones are in compliance with the Federal Motor Carrier Safety Regulations and the mandates of Section 350 of the FY 2002 Act. The approved plans and procedures will be in place no later than the end of FY 2005.

**Recommendation 2b.:** Fully implement the requirements of Section 350 by effectively implementing the August 2002 rule on enforcing operating authority through (1) resolution of concerns about the use of out of service terminology in the enforcement authority rule, (2) guidance and/or training support to States on the implementation of the rule, and (3) continued

work with the five States that have not adopted the rule to ensure that rules concerning operating authority are enforced.

**Response:** The August 2002 rule is being implemented. FMCSA continues to aggressively encourage the States which have not yet adopted this rule to do so and other States that have to more effectively enforce it. We recommend that the language be changed to read, “authority through (1) *achievement of full compliance with the out of service ....*”

**Recommendation 2c.:** Fully implement the requirements of Section 350 by identifying actions and milestones needed to make all WIMS fully operable.

**Response:** FMCSA funded the deployment of the WIMs at the 10 busiest commercial cargo crossings with funds appropriated in FY 2002. The States are responsible for maintaining these WIMs and, except for routine maintenance, unforeseen breakdowns or improvements to the inspection areas—the WIMs are to be operational. FMCSA will require each of the three border States with WIMs to include in its individual Commercial Vehicle Safety Plans a program for the maintenance of its border WIMs. In addition, even when WIMs are not operational, there are platform scales at all the WIM sites to provide redundant weighing, if necessary, by the States.

**Recommendation 2d.:** Fully implement the requirements of Section 350 by ensuring that a comprehensive system for monitoring Mexican drivers is established by (1) setting milestones for all States to test the 52<sup>nd</sup> state system and (2) reviewing reports on the data States provide to the 52<sup>nd</sup> state system to correct any inconsistencies in the data.

**Response:** FMCSA fully implemented the 52<sup>nd</sup> State system. As with all its information systems, FMCSA continually looks for ways to improve the quality and timeliness of the data. The FMCSA division administrators will meet with the States to explain and/or correct inconsistencies in the data so that any inconsistencies can be corrected by the end of FY 2005.

**Recommendation 3a.:** Take the following action to avoid future problems should long-haul authority be granted to Mexican carriers: Establish procedures during pre-authority safety audits to ensure that Mexican motor carriers applying for long-haul authority provide up-to-date and accurate information on power units and drivers for inclusion in SafeStat calculations.

**Response:** This information is being provided by Mexican carriers as part of the application process and will be verified by FMCSA during the required safety audit. All Mexican carriers receiving authority to operate beyond the commercial zones are also subject to a compliance review and safety monitoring system for a period of at least 18 months after receiving provisional authority to operate, during which data can be corrected and updated.

**Recommendation 3c.:** Take the following action to avoid future problems should long-haul authority be granted to Mexican carriers: Establish milestones, in conjunction with ODAPC and other DOT staff, to ensure that drug and alcohol testing issues, such as the establishment of sufficient controls at Mexican collection sites, are adequately addressed.

**Response:** FMCSA will coordinate with the Office of Drug and Alcohol Policy Compliance (ODAPC) its mutual activities to ensure Mexican motor carriers are fully aware of, and comply with, the controlled substance and alcohol testing and use requirements. FMCSA will meet with ODACP at least semi-annually and with the appropriate Mexican government officials, in conjunction with ODACP, to ensure proper procedures are followed at the collection sites in Mexico. Enhanced attention to this requirement will be emphasized during the safety audit required by Section 350.

We look forward to working with OIG in continuing to improve motor vehicle safety—both at the borders and across the country. We are pleased that your recommended actions to meet Congressional preconditions for opening the United States–Mexico border have been satisfied. Please do not hesitate to contact me or Bill Paden, Associate Administrator for Enforcement and Program Delivery, at (202) 366-2525, if any further information or clarification is needed.

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

## **Textual Translation of Figures in the Report**

### **Mexican Vehicle Out-of-Service Rates Compared to Number of Inspections Performed**

Figure 1, located on page 16 of the Report, provides a chart showing a correlation between the increase in the number of vehicle inspections and a decline in the rate of Mexican trucks placed out-of-service for vehicle safety violations. The chart indicates the following.

As the number of vehicle inspections has increased, the rate of Mexican trucks placed out-of-service for vehicle safety violations has declined from 40 percent of inspections in FY 1999 to 23 percent in FY 2003. By comparison, the overall rate for U.S. vehicle inspections in FY 2003 was 22 percent.

### **Hiring and Training of Federal Enforcement Personnel**

The Table, located on page 17 of the Report, identifies the number of people hired and trained for each of FMCSA's designated enforcement categories and shows the trend in hiring since our May 2003 audit. The Table indicates the following.

About 95 percent or 259 of the 274 Federal enforcement personnel positions authorized at the southern border were filled as of June 2004. This is an increase of 12 vacant positions since the last review. However, all vacant positions had hiring actions in process. The 259 positions filled include 129 inspectors, 64 safety auditors, 49 investigators, and 17 supervisors or support staff. All personnel on-board had received the required training.

### **States That Have Adopted the FMCSA Operating Authority Rule**

Figure 2, located on page 22 of the Report, identifies the states that have adopted the FMCSA Operating Authority Rule. The map indicates the following.

As of June 2004, 46 states had adopted the rule and 5 states: Alaska, Michigan, New Jersey, New York and North Carolina had not. Of the five, three expect to adopt the rule by early 2005. This is an increase of 15 from the number reported as having adopted the rule in our May 2003 report.