



Owner-Operator Independent Drivers Association

National Headquarters: 1 NW OOIDA Drive, Grain Valley, MO 64029
Tel: (816) 229-5791 Fax: (816) 427-4468

Washington Office: 1100 New Jersey Ave, SE, Washington, DC 20003
Tel: (202) 347-2007 Fax: (202) 347-2008

October 1, 2014

The Honorable T.F Scott Darling, III
Acting Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Acting Administrator Darling:

Today marks the scheduled expiration of the three-year U.S.-Mexico Cross Border Long Haul Trucking Pilot Program.¹ OOIDA continues to have a number of concerns with the Pilot Program, ranging from FMCSA's operation of the Pilot and how the agency is evaluating data generated through the Pilot. The expiration of the Pilot makes clarity on these issues more pressing, especially as FMCSA has not outlined what steps it will be taking moving forward.

FMCSA initially set a number of benchmarks to determine the success of the pilot program and the safety of the trucks entering the U.S., most notably that 46 carriers would need to participate in the program *and* that at least 4,100 inspections would need to be conducted on those carriers in order for program data to be statistically valid. While more than 5,175 inspections occurred as of July 13, 2014, there have been only 13 program participants (out of more than 132,000 Mexican-domiciled carriers). In the July 8, 2011 Notice, FMCSA estimated the upper limit for potential Pilot participants at 316 carriers. While 46 carriers would have represented 15 percent of this population, the 13 participating carriers represent just over four percent, a significant difference.

These numbers become even more significant when comparing inspections and border crossings across participants. Two carriers alone have accounted for more than 81% of all inspections and 90% of all crossings. This information casts significant doubt on the Pilot Program's ability to meet Congressional requirements for statistical validity under 49 USC 31315. It is OOIDA's view that because most of the inspection data collected comes from just a few carriers, the data is biased and does not accurately reflect the safety performance of trucks in the Pilot, much less the broader Mexican truck fleet.

What is most alarming is that according to inspection data, Mexican trucks and/or drivers are not being placed out-of-service for violations that would warrant such action nor are they being placed out of service at the same rate as U.S.-domiciled trucks and/or drivers for similar violations. This disparity in enforcement action raises safety concerns in general, but especially about the Pilot Program. Raising concerns further, it has been frequently reported, including from Mexican trucking representatives, that Pilot Program carriers send their best trucks and drivers to the border. As such, there are significant doubts as to how effective the Pilot Program has been in measuring the impact on motor carrier safety.

Finally, 83% of all miles travelled by Pilot Program participants as of July 13, 2014 have occurred within the commercial border zones, with only 5% of destinations beyond these zones. Participation in the Pilot Program was not necessary for all but a handful of the trips used to generate inspection data for the FMCSA evaluation.² This is far from meeting the statutory standards for the Pilot Program, as set by Section 6901 of PL 110-28, which calls for the pilot program to consist of "a representative and adequate sample of Mexico-domiciled carriers likely to engage in cross-border operations *beyond United States municipalities and commercial zones on the United States-Mexico border*" [emphasis added].

¹ Pilot Program on the North American Free Trade Agreement (NAFTA) Long-Haul Trucking Provisions, Docket No. FMCSA-2011-0097, 76 Fed. Reg. 40420 (July 8, 2011).

² Indeed, the two carriers that generated 90% of all crossings and 81% of all inspections crossed the border 18,628 times as of July 13, 2014. Only 102 of those crossings were for destinations outside the commercial border zone.

Despite these safety and statistical concerns, during the July 2014 MCSAC Border Subcommittee meeting FMCSA staff gave the impression that the program is a success and hopes to either extend it or make it permanent. With the Pilot Program coming to an end, and in advance of the October 27th MCSAC meeting, OOIDA submits the following questions to FMCSA and asks that you provide a response in writing as soon as possible:

- What actions does the agency plan to take regarding the carriers and drivers operating in the current Pilot Program following October 1, 2014? What authority would FMCSA have to extend the program? Does FMCSA plan to accept applications from new carriers for Cross Border operating authority after October 1, 2014?
- Will FMCSA be establishing a permanent US-Mexico Cross Border Trucking Program? If so, under what statutory authority? What timeline does the agency have for moving forward with a permanent Program?
- The DOT's September 2014 Report on Significant Rulemakings includes two rulemaking actions related to the Cross Border Program.³ Does the agency see issuing final rules on two actions after a notice-and-comment rulemaking process as necessary before making the Cross Border Program permanent?
- Under a permanent Cross Border Program, if FMCSA plans to grant "permanent authority" to Mexico domiciled motor carriers, is FMCSA going to continue to use the exact same procedures and safety standards going forward that it used during the Pilot Program to grant authority to and monitor the safety performance of Mexico-domiciled motor carriers? If a different regulatory scheme is contemplated for the future, then please describe in detail.
- What authority does FMCSA have, beyond the authority to conduct a pilot program, to 1) accept Mexico's commercial driver's licenses in lieu of U.S. CDLs required under 49 USC Section 31302, 2) not require drivers for Mexico domiciled motor carriers to hold a medical certificate required of U.S. drivers under 49 USC section 31149(c)(1)(B), or 3) to permit drivers for Mexico Domiciled motor carriers to submit drug testing samples to facilities in Mexico that are not under the supervision of DOT or FMCSA under 49 USC Part 40 Subpart C?
- A Mexican government official has discussed at several recent meetings at the Commercial Vehicle Safety Alliance that FMCSA has provided Mexico with comments, advice, or similar communications as to 1) how Mexico could bring its safety standards up to those in the United States, and 2) what it would need to do for the countries to enter into new Memorandums of Understanding regarding Commercial Drivers Licenses and other safety requirements. Would FMCSA please put into the Pilot Program record, or otherwise release to the public copies of all such communications so that FMCSA's efforts to conduct the pilot program and lay the groundwork for future action in this area are transparent?
- Finally, FMCSA has never released any analysis of the apparent lack of databases in Mexico collecting the same breadth of information about individual driver behavior, including behavior in personal vehicles, which is relied upon to determine a U.S. driver's continued qualification to hold a CDL. Has it ever performed such an analysis? If so, would the agency make this publicly available?

We look forward to a timely response.

Sincerely,



Todd Spencer
Executive Vice President

³ Application by Certain Mexico-Domiciled Motor Carriers to Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border"/RIN 2126-AA34 and "Safety Monitoring System and Compliance Initiative for Mexico-Domiciled Motor Carriers Operating in the United States"/ RIN 2126-AA35.