

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

Federal Motor Carrier Safety Administration

Report Number: MH-2007-062

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Memorandum

U.S. Department of
Transportation

Office of the Secretary
of Transportation
Office of Inspector General

Subject: **ACTION:** Follow-Up Audit on the
Implementation of the North American Free Trade
Agreement's Cross-Border Trucking Provisions
Federal Motor Carrier Safety Administration
Report Number MH-2007-062

Date: August 6, 2007

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for Surface and Maritime Programs

Reply to
Attn. of: JA-40

To: Federal Motor Carrier Safety Administrator

This final report presents the results of our annual audit of the North American Free Trade Agreement's (NAFTA) Cross-Border Trucking Provisions. The Department of Transportation (DOT) and Related Agencies Appropriations Act for Fiscal Year (FY) 2002 (the FY 2002 Act)¹ provided funds to the Federal Motor Carrier Safety Administration (FMCSA) to implement NAFTA. However, the FY 2002 Act and subsequent appropriation legislation through FY 2006 prohibited FMCSA from using Federal funds to review or process Mexico-domiciled motor carrier applications to operate beyond the United States commercial zones² until certain preconditions were met. Further, the FY 2002 Act established a precondition for allowing Mexican motor carriers to haul hazardous materials beyond the commercial zones.

Section 350 of the FY 2002 Act also included a requirement for an annual review by the Office of Inspector General (OIG) of eight specific safety-related criteria, which would cover Mexico-domiciled motor carrier operations beyond the commercial zones. The OIG issued reports in June 2002, May 2003, and January 2005 that addressed the eight criteria and other border safety operation issues identified.

¹ Pub. L. No. 107-87 (2001).

² Section 350 refers to Mexico-domiciled motor carriers operating beyond United States municipalities and commercial zones on the United States-Mexico border (the southern border) as Mexican motor carriers. Commercial zones at the southern border generally extend from 3 to 25 miles north of U.S. border municipalities (or 75 miles within the State of Arizona). Our audit also refers to the operation of Mexico-domiciled motor carriers outside of these zones as "long-haul" operations.

Our latest report, issued in January 2005,³ concluded that FMCSA had sufficient staff, facilities, equipment, and procedures in place to substantially meet the eight Section 350 criteria. However, the report made nine recommendations to FMCSA; four of these addressed actions relevant to the eight criteria that the OIG is required to review. The remaining five addressed two preconditions set forth elsewhere in Section 350 and three areas not specifically addressed in Section 350.

Our audit objective was to assess the actions FMCSA took in response to our January 2005 report recommendations. Our report highlights FMCSA’s actions in response to the prior report and areas where additional improvement is needed. Exhibit A details our audit scope and methodology. Exhibit B provides information on the status of the eight criteria and details FMCSA’s actions in response to our January 2005 report recommendations and other issues not discussed in the findings section of this report. Exhibit F defines the abbreviations used in this report.

We conducted this performance audit from March 2006 through July 2007 in accordance with Generally Accepted Government Auditing Standards as prescribed by the Comptroller General of the United States. We performed such tests as we considered necessary to detect fraud, waste, and abuse.

RESULTS IN BRIEF

Data from our current review and our earlier reports dating back to 1998 point to continual improvement in the border safety program. For example, based on our analysis of FMCSA data, as figures 1 and 2 show, both the number of FMCSA inspectors hired and trained at the border, as required by the FY 2002 Act, and the percentage of Mexican trucks taken out of service after inspection improved in comparison to our earlier reporting.

Figure 1. Number of FMCSA Border Inspectors

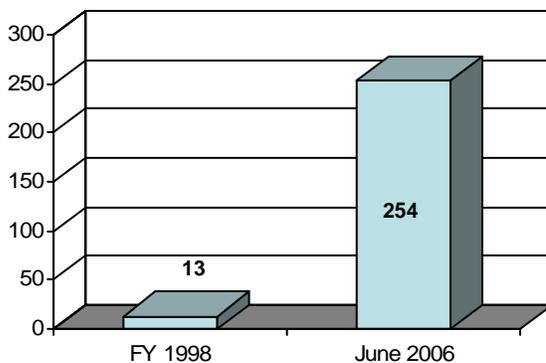
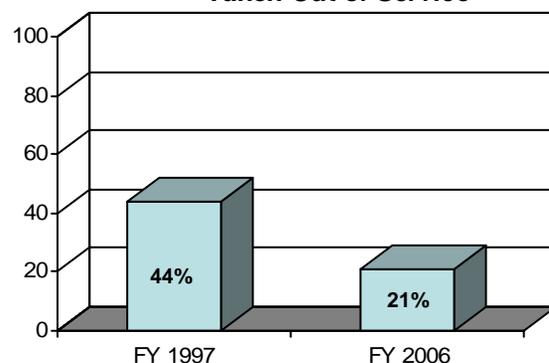


Figure 2. Percentage of Mexican Trucks Taken Out of Service



³ OIG Report Number MH-2005-032, “Follow-Up Audit of the Implementation of the North American Free Trade Agreement’s (NAFTA) Cross-Border Trucking Provisions,” January 3, 2005. OIG reports and testimonies can be found on our website: www.oig.dot.gov.

Our current work also found that FMCSA took the actions it agreed to in response to our nine January 2005 report recommendations. FMCSA continues to work with the states and others to resolve prior report issues that its actions did not fully resolve. FMCSA's completed actions include (1) ensuring that five states, which had not yet done so, adopted a rule that requires enforcement action against Mexican motor carriers or others operating without proper authority from FMCSA and (2) prompting states with high-volume motor carrier commercial vehicle crossings to address the maintenance of weigh-in-motion scales in commercial vehicle safety plans.

Despite the progress FMCSA has made, additional improvements are needed in two of the eight Section 350 (c)(1) criteria.

- **Improving the quality of the data used to monitor Mexican commercial driver traffic convictions in the United States:** Our work determined that the system used to monitor Mexican commercial driver license convictions, the 52nd State System, still contains data inconsistencies. Enforcement officials need the data to identify drivers not permitted to operate on U.S. highways.
- **Ensuring adequate capacity to inspect Mexican buses:** Although FMCSA, in response to our 2005 audit, implemented the Southern Border Commercial Bus Inspection Plan that identified inspection issues and strategies for addressing those issues for specific bus border crossings, other important issues have surfaced. For example, at one high-volume crossing, physical space and capacity limitations prevented inspections during high-volume holiday periods. This means that Mexican buses granted long-haul operating authority in the United States may not be inspected during busy periods.

Additionally, FMCSA and the Department should continue to address two areas noted in our January 2005 report that are outside the Section 350 criteria.

- **Fully implementing FMCSA's policy on ensuring Mexican carrier compliance with Federal motor vehicle manufacturing safety standards:** One mechanism Federal inspectors could use to ensure that Mexican vehicles have complied with manufacturing safety standards is to check a vehicle's identification number to identify the year of manufacture. However, FMCSA has not issued additional guidance that would make it mandatory for inspectors to check the vehicle number and record it in inspection records.
- **Continue focusing on Mexican carrier drug and alcohol testing issues:** Mexico has no certified testing laboratories and any samples collected in Mexico must be sent to certified laboratories in the United States. Although FMCSA has taken the actions noted in our prior report, it is not clear whether

the controls in place ensure that valid specimens are being collected in Mexico before being sent to a certified laboratory.

SUMMARY OF RECOMMENDATIONS

We recommend that FMCSA improve the comprehensiveness and consistency of Mexican commercial driver traffic conviction data by developing state corrective action plans to address state-specific issues and by instituting a quarterly review process to routinely identify and notify states of data inconsistencies. FMCSA should also address bus inspection issues by working on a site-specific basis with U.S. Customs and Border Protection to modify the Southern Border Commercial Bus Inspection Plan. Our full recommendations, including those addressing other border safety areas, are cited on page 12.

These improvements are needed more urgently than ever because Mexican motor carriers may be granted long haul authority in the near future. On February 23, 2007, the Secretary of Transportation announced that a select number of Mexican motor carriers, not including Mexican commercial drivers hauling hazardous materials or Mexican buses, would be granted long-haul authority as part of a 1-year long project.⁴ This demonstration project was detailed in May 1 and June 8, 2007, Federal Register notices.⁵

We plan to review FMCSA compliance with elements of Section 350 in an upcoming audit, in accordance with the United States Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007.⁶ We will also assess whether the mechanisms established by FMCSA are sufficient to apply Federal motor carrier safety laws and regulations to Mexican motor carriers operating in the United States. The issues we highlighted above relate to some of the same mechanisms we plan to review. FMCSA should address any issue specific to the demonstration project before the project begins.

SUMMARY OF AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

We provided FMCSA with a draft of this report on June 29, 2007. On July 18, 2007, FMCSA provided us with its formal comments (see page 39). In its comments, FMCSA stated that it considers many of the findings and recommendations to be constructive and already has actions underway to address

⁴ This authority was not granted in the past because there was no agreement regarding on-site safety inspections of Mexican motor carriers. On February 22, 2007, the Secretary announced that Mexico would permit on-site safety inspections.

⁵ 72 FR 23883 and 72 FR 31877.

⁶ Pub. L. No. 110-28 (2007).

them. FMCSA concurred with all of our recommendations and proposed corrective actions, which we have accepted. Specifically, FMCSA concurred with our recommendation to improve the 52nd State System's comprehensiveness and consistency by ensuring that all southern border states complete their plans for corrective actions, instituting a monthly data report to identify problems, and periodically notifying states of any inconsistencies it finds. FMCSA also concurred with the recommendation to modify the state commercial bus inspection plan to ensure adequate coverage at the Lincoln-Juarez crossing at Laredo, Texas, during periods of peak bus traffic. In addition, it plans to contract a review of the effectiveness of its commercial bus inspection plan.

FMCSA agreed to require its inspectors to look at the vehicle identification number for all long-haul, Mexico-domiciled carriers to check on vehicle compliance with manufacturing standards and to record this information. FMCSA also states that it will revise its system software so that it will automatically remind its inspectors to enter the vehicle identification number. Furthermore, FMCSA agreed to establish an action plan, in coordination with the Department's Office of Drug and Alcohol Policy and Compliance, to conduct audits of various Mexican drug collection facilities and laboratory and to work with Mexico to meet U.S. requirements. Our complete analysis of FMCSA comments is on pages 13 through 14 of this report.

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FINDINGS

FMCSA Has Continually Improved the Border Safety Program

Data from our current reviews and earlier reports point to continued improvement in FMCSA's border safety program since we began reporting in 1998. FMCSA has hired and trained the inspectors required by the FY 2002 Act, and the number of Mexican driver and vehicle inspections in the United States has increased over time. Further, the percentage of Mexican trucks taken out of service after inspection has improved dramatically.

In 1998, we reported that FMCSA had only 13 Federal inspectors at the southern border and that 44 percent of Mexican trucks inspected in FY 1997 were removed from service because of safety violations. Now, FMCSA has 254 enforcement personnel at the border; these include 128 Federal inspectors. Also, the percentage of Mexican trucks placed out of service dropped to under 21 percent in FY 2005 and FY 2006, a figure comparable to that of U.S. trucks at 22 percent.

In FY 2006, a total of 211,106 Mexican driver and vehicle inspections were performed in the United States, as compared with 2,554,280 inspections for U.S. drivers and vehicles. Table 1 includes the commercial vehicle and driver out-of-service rates for Mexican motor carriers inspected for FY 2004 through 2006. These are the rates at which a vehicle or driver safety violation precludes further operation of a commercial vehicle by its driver—until either a specified period elapses or a required condition is met.

Table 1. FY 2004–FY 2006 Out-of-Service Rates of United States, Mexico, and Central America Motor Carriers

Out-of-Service Rates	Vehicle			Driver		
	The percentage of vehicles inspected and placed out of service due to safety or regulation violation.			The percentage of drivers inspected and placed out of service due to a license violation.		
	2004	2005	2006	2004	2005	2006
United States	22.6%	22.4%	22.3%	6.8%	6.9%	7.3%
Mexico	23.1%	20.4%	20.9%	1.9%	1.1%	1.2%
Central America*	39.5%	28.3%	42.7%	10.6%	4.8%	29.3%

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

*Our analysis noted 491 U.S. inspections in FY 2006 pertaining to Central American motor carriers. According to FMCSA, Central American carriers must comply with FMCSA safety requirements in the United States and New Entrant Safety Program rules specific to non-North American commercial motor carriers operating in the United States.

FMCSA Adequately Addressed Two of the Four Section 350 (c) Issues Reported in 2005

Our current work also assessed FMCSA's actions in response to our last report to the Department in January 2005. In that report, we made four recommendations for improvement, which addressed actions relevant to the eight criteria that the OIG is required to review. Of the four issues, FMCSA has adequately addressed two. These issues relate to effectively enforcing actions against Mexican motor carriers and ensuring operable weigh-in-motion scales at the 10 highest volume crossings.

FMCSA and the states have made significant progress in resolving problems associated with ensuring that all states can take effective enforcement action against Mexican motor carriers. One of the FY 2002 Act criteria⁷ requires that measures be in place for ensuring "effective enforcement" of Mexican motor carriers. In our 2005 audit, we reported that five states had yet to adopt FMCSA's August 2002 interim final rule⁸ on enforcing operating authority; this would require states to place Mexican motor carrier vehicles out of service for operating authority violations. Our audit concluded that FMCSA's actions addressed our prior recommendation to ensure that all states and the District of Columbia adopted the rule. The five states without operating authority have now adopted the rule.

As we reported in 2005, some states that had adopted the operating enforcement rule noted problems implementing it. However, when we followed up with the 14 states we had contacted during our prior audit, we found improvement. According to state officials, one positive factor in implementing the rule was an August 2005 change to the Commercial Vehicle Safety Alliance (CVSA)⁹ North American Standard Out-of-Service Criteria used by Federal and state officials. The changed criteria instructed officials that operating authority violations are a basis for placing a vehicle out of service. Additionally, both FMCSA and CVSA provided states with training to implement the rule.

However, based on contacts with officials in three states outside the southern border, we remain concerned about procedures for obtaining information on the status of carriers' operating authority. For example, officials in two states we contacted noted difficulties with determining operating authority because the police cars did not have Internet access for checking the status of carriers. Additionally, these officials noted that they did not know about FMCSA's toll-free telephone number that could be used to check the status of carriers. In another

⁷ Section 350 (c)(1)(H).

⁸ The final rule was issued on August 28, 2006 (71 FR 50862).

⁹ CVSA is an association of state, provincial, and Federal Government agencies in the United States, Canada, and Mexico responsible for the enforcement and administration of motor carrier safety laws.

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state, an official we contacted was aware of the toll-free number but said that few of the police cars in the state had cellular telephones, so most police could not access the number. In our view, these examples illustrate how important it is for FMCSA to ensure the data that motor carrier enforcement officials require to identify carriers operating without proper authority are current, complete, and accessible. We plan to review this issue further during our congressionally mandated reviews surrounding the announced demonstration project.

FMCSA took the action needed to ensure that weighing scales are fully operational. As we reported in January 2005, weigh-in-motion scales were in place at the 10 highest volume United States-Mexico commercial vehicle traffic border crossings in compliance with Section 350 (a) requirements. However, at the time of our crossing visits, the scales were not working at four Texas crossing facilities. Accordingly, we recommended that FMCSA identify actions and milestones needed to make all scales fully operational to conduct meaningful motor carrier inspections. In response to our recommendations, FMCSA required each of the 3 southern border states with the 10 high-volume crossings (Arizona, California, and Texas) to include a state weigh-in-motion scale maintenance program in their annual commercial vehicle safety plans. We verified that the program was included in the state plans and further observed the scale at the World Trade Bridge Border Crossing in Laredo, Texas, one of the required crossings, and determined that it was operational.

FMCSA Still Needs To Improve Two Areas Under Section 350 (c)

Despite the progress FMCSA has made, additional improvements are needed in two of the eight section 350 (c) criteria that the OIG is required to review. The first is the need to improve the quality of data used to monitor Mexican commercial driver traffic convictions in the United States. The second is to ensure adequate capacity to inspect Mexican buses.

FMCSA has databases in place to monitor motor carriers and drivers, but action is needed to address data inconsistencies and reporting problems. One FY 2002 Act criteria¹⁰ calls for an accessible database containing “sufficiently comprehensive data” for monitoring all Mexican motor carriers and their drivers that apply for authority to operate beyond the municipal and commercial zones on the United States-Mexico border. FMCSA has established three additional data systems to meet the criteria. The first system established, the Mexican Monitoring sub-system, is part of FMCSA’s Motor Carrier Management Information System (MCMIS). FMCSA intends to use the MCMIS Mexican Monitoring sub-system to identify Mexican carriers granted long-haul authority in the United States that require compliance reviews for specific violations, generate letters on corrective

¹⁰ Section 350(c)(1)(G).

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actions, and create a history of violations and corrective dates. The second system, the 52nd State System, contains records of traffic violations Mexican commercial drivers commit in the United States. The third system, Mexico's Licencia Federal Information System (LIFIS), contains Mexican records showing Mexican motor carrier commercial drivers with valid, disqualified, or expired licenses.

Our current work re-examined the data inconsistencies noted in our 2005 report with the 52nd State System and the actions FMCSA took in response. FMCSA reports that the system is operational and that 49 states and the District of Columbia can now electronically record convictions;¹¹ however, we found that data inconsistencies and reporting problems previously identified at southern border states with the 52nd State System still require continued action and monitoring. For instance, the number of Texas and New Mexico reported Mexican commercial driver license convictions in the 52nd State System showed a dramatic decline in the beginning of 2006 when compared to prior months, and there are notable differences between the total number of Arizona, California, and New Mexico reported convictions and Texas reported convictions (see table 2).

Table 2. 52nd State System Mexican Commercial Driver Convictions Since System Inception and for Beginning of 2006

Southern Border State	52nd State System Mexican Driver Convictions Since System Inception March 2002 through December 2005 (46 months)	52nd State System Mexican Driver Convictions January 2006 to May 2006 (5 months)
Arizona	20	27
California	28	6
New Mexico	291	0
Texas	4,677	2
Source: OIG analysis of data from TML Information Services (52nd State System Contractor)		

When we brought these anomalies to FMCSA's attention in June 2006, it investigated the situation and found that New Mexico had incorrectly coded its data and failed to record any convictions in the database after July 2005. Texas also had stopped providing conviction information to the database and had accumulated a backlog of some 40,000 Mexican commercial driver-related convictions to review. We do not know how long it took the backlog in Texas to

¹¹ The remaining state, Oregon, manually submits its data and has committed to completing the necessary steps to go to electronic submissions by September 2008.

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develop. Further, FMCSA disclosed that in order to identify violations for inclusion into the 52nd State System, Arizona officials had to manually sort Mexican driver convictions to identify specific violations. Additionally, California officials were not being provided with the details of the driver violation in certain instances.

To its credit, FMCSA took swift action during our current review to work with all four southern border states to develop corrective action plans addressing these issues. For example, after developing an action plan with Texas, FMCSA reported that almost half of the Texas backlog was entered into the 52nd State System database and that most of the remainder was identified as truck safety-related violations that are not required to be entered into the system.¹²

Strong follow-up action by FMCSA will be necessary to ensure that the states implement their corrective action plans. Alternatively, FMCSA should implement interim solutions if the plans cannot be completed in a timely fashion. Moreover, if FMCSA develops a process that performs a quarterly inspection of the database, notifies states of data inconsistencies, and ensures that states take immediate steps to correct inconsistencies, future problems could be avoided. The process must also ensure that this monitoring extends beyond the southern border states in order to identify problems that could develop if Mexican carriers operate more extensively outside the border states during the demonstration project.

FMCSA also reports that Mexico's LIFIS is now comprehensive and contains all Licencia Federal records—269,000 valid licenses, 140,000 expired licenses, and 9,000 disqualified or restricted licenses. In our opinion, this is an improvement from FY 2001, when LIFIS contained only 20 percent of Mexico's Licencia Federal license holders. FMCSA data from April 2006 showed that U.S. Federal and state officials have used LIFIS data to check the status of Mexican commercial driver licenses, performing over 19,000 LIFIS queries. They found that:

- 82 percent of the queries resulted in the report of a valid Mexican commercial driver license.
- 2 percent of the queries resulted in a report of either an expired license or a restriction (by the Mexican Government) limiting drivers to operate in Mexico.

¹² The 52nd State System database includes convictions for serious and disqualifying offenses, such as driving under the influence of alcohol or drugs, and serious traffic offenses, such as multiple, excess speeding violations or reckless driving. Not included in the database are violations relating to truck safety issues or certain motor carrier regulations, such as violations relating to operating a vehicle without operating authority or drivers failing to provide shipping documents.

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- 16 percent of the queries resulted in a “driver not found” report, which, according to FMCSA, could have resulted from enforcement official input errors at the time the query was made.

While FMCSA asserted that the data are now comprehensive, our ability to test the comprehensiveness of LIFIS information was limited because LIFIS is under the control of the Government of Mexico. We conducted audit work for our June 2002 report¹³ that validated the accuracy of information in LIFIS by tracing information in the system back to source documents. However, during the current audit, we could not determine whether the large percentage of queries to LIFIS that resulted in a response of “driver not found” were due to data entry problems by U.S. users of the system, attempts by Mexican drivers to operate with invalid licenses, incompleteness of the Mexican database, or other unknown reasons.

FMCSA took positive action to improve bus inspection coverage, but additional issues should be addressed. The FY 2002 Act criteria¹⁴ called for the OIG to verify whether FMCSA has adequate capacity at crossings to conduct a sufficient number of meaningful vehicle safety inspections. These criteria apply to buses as well as trucks. The FY 2002 Act does not distinguish commercial buses from commercial trucks, although buses operate differently from commercial trucks at the border. Buses are permitted to enter the United States at separate bus crossings and at times when commercial trucks are restricted. While our January 2005 report did not identify issues specific to truck or bus inspections conducted at commercial crossings, we found that the number of staff at some designated bus crossings was insufficient to meet the Act’s criteria for verifying the bus driver’s commercial license and inspecting vehicles.

Our January 2005 report recommended that FMCSA revise policies, procedures, staffing, and facility plans to make Mexican bus coverage consistent with FMCSA policy on vehicle and driver inspections for commercial vehicles that are granted long-haul authority.¹⁵ In response to our report, FMCSA worked with the U.S. Customs and Border Protection to identify mutually acceptable procedures and issued the Southern Border Commercial Bus Inspection Plan. The Inspection Plans identified the ports of entry in each southern border state along with a description of their respective bus inspection issues and the planned strategies for addressing those issues.

¹³ OIG Report Number MH-2002-94, Implementation of Commercial Vehicle Safety Requirements at the U.S.-Mexico Border, June 25, 2002.

¹⁴ Section 350 (c)(1)(F).

¹⁵ Approximately 250,000 buses crossed the southern border in FY 2005. Mexican bus inspections include inspections of Mexican motor coaches, buses, and school buses. In FY 2006, FMCSA reported 19,166 bus inspections performed in the four southern border states. This was a further decrease from the 27,262 bus inspections reported in FY 2005 and the 29,124 reported in FY 2004.

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As part of our present audit, we observed a bus crossing in Laredo, Texas, that services an average of 3,000 bus crossings monthly (see figure 3). At this crossing, we identified physical space and capacity limitations that prevented FMCSA and the state motor carrier inspectors from conducting bus inspections during high-volume holiday periods. This concern needs to be addressed to ensure that Mexican bus carriers granted long-haul authority are not able to avoid vehicle or license inspections during busy periods at this crossing. However, this important issue was not identified in FMCSA's Southern Border Commercial Bus Inspection Plan, which covers this crossing. Additionally, when we surveyed selected inspectors at border crossings, other bus inspection items were brought to our attention, such as lack of a ramp on which to conduct inspections. FMCSA should routinely confirm the effectiveness of its inspection plan, either by periodically surveying its inspectors or pursuing other means, to identify site-specific issues to improve bus inspections.

Figure 3. FMCSA Bus Inspection at Laredo, Texas, September 2006



Source: OIG

Issues Not Specified in Section 350 of the FY 2002 Act Also Need FMCSA's Continued Attention

There are two issues aside from the specific requirements of Section 350 that FMCSA should continue to address. FMCSA needs to take actions to fully implement a FMCSA policy on compliance with Federal motor vehicle manufacturing safety standards. Further, FMCSA's continued attention is needed on drug and alcohol testing issues.

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FMCSA needs to implement its policy on Mexican carrier compliance with motor vehicle manufacturing safety standards. Our January 2005 report urged FMCSA to resolve issues related to a March 2002 rule it proposed requiring Mexican motor carriers operating commercial vehicles in the United States to display a label from the manufacturer asserting that the vehicle met all applicable National Highway Transportation Safety Administration vehicle manufacturing safety standards when it was built. In August 2005, FMCSA withdrew the proposed rulemaking after determining that it could effectively ensure Mexican motor carriers' compliance with these standards while operating in the United States by enforcing established motor carrier safety regulations and policies.

When FMCSA withdrew the rulemaking, it issued an internal policy to its staff requiring Mexico-domiciled carriers applying to operate in the United States to certify that their vehicles were built or retrofitted in compliance with applicable manufacturing safety standards. According to the internal policy, the certification confirmation will occur during the pre-authority safety audit and subsequent inspections. Additionally, under the policy, if FMCSA or state inspectors determine through vehicle inspections or during a pre-authority safety audit that Mexican motor carriers are operating vehicles that do not comply with the safety standards, they could deny, suspend, or revoke a carrier's operating authority or certificate of registration or issue penalties for falsification of records.

Our current work did not assess FMCSA's rationale for withdrawing the rulemaking, but we identified a problem hindering the full implementation of the August 2005 internal policy. The policy provided instructions to FMCSA inspection staff on how to determine whether a vehicle complies with applicable manufacturing standards. For example, according to the instructions, for any vehicle that does not carry a label certifying compliance with these standards, an inspector can check the vehicle identification number (which identifies the model year). FMCSA has determined that most vehicles produced in Mexico beginning in model year 1996 have met applicable manufacturing standards. However, the policy stated that guidance will be forthcoming before the August 2005 policy can be implemented. To date, no additional guidance has been provided.

As a result, the August 2005 policy addresses procedures for recording vehicle identification numbers, but does not require inspectors to record this information. Our analysis of FMCSA's FY 2005 Mexican motor carrier inspection records database showed that additional guidance may be needed. Data show that inspectors are entering Mexican motor carriers' vehicle identification numbers in the inspection database only 37 percent of the time. For the remaining 63 percent, the optional vehicle identification number database field included non-related or incomplete data or no data at all.

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In January 2007, FMCSA reported to us that it was making software modifications to prompt a vehicle identification number check when inspectors record roadside inspection data. FMCSA is also reassessing whether future guidance is necessary. Prompt resolution of questions about whether more guidance is needed to ensure compliance with motor vehicle manufacturing safety standards through this method will help ensure that inspectors can identify vehicles not meeting the requirements established for Mexico-domiciled carriers.

FMCSA's continued attention is needed to ensure implementation of comparable drug and alcohol testing in Mexico. Our 2005 report noted that, unlike sites in the United States, drug and alcohol testing collection sites in Mexico are not covered by the Department's reviews, and Mexico has no certified testing laboratories. Instead, Mexican carriers send the collected specimens to certified U.S. drug-testing laboratories. In a 1998 memorandum of understanding between the Department of Transportation and its Mexican counterpart, the Mexican authorities agreed to follow collection procedures equivalent to those used by the Department of Transportation. Our 2005 report recommended that FMCSA establish milestones to ensure that Mexican motor carrier drug and alcohol testing issues—such as adequacy of collection sites—are addressed.

Although FMCSA did not agree to provide milestones for addressing the issues presented in our January 2005 report, it committed to meeting regularly with the U.S. Department of Transportation's Office of Drug and Alcohol Policy Compliance and Mexican government officials to ensure that drug and alcohol testing issues are being addressed. We confirmed that such meetings occurred. Further, in December 2006, FMCSA issued pre-authority safety audit guidance to its staff specifying the information that a Mexican motor carrier must provide to demonstrate that it is using a certified laboratory for drug testing.

However, a significant issue with specimen collection remains. It is not clear as to whether the controls in place ensure that valid specimens are being collected before being sent to a certified laboratory. We found no evidence that collection site concerns have been resolved. FMCSA should establish an action plan, in coordination with other appropriate offices, to ensure that drug and alcohol collection issues are adequately addressed.

OIG Reviews of the Project Allowing Mexican Carriers To Operate in the United States Are Planned

On February 22, 2007, the Secretary of Transportation announced that the Government of Mexico would allow U.S. officials to perform on-site reviews of Mexican carriers applying for long-haul authority in the United States. This announcement was shortly followed with the Department's February 23, 2007, announcement of a demonstration project that will grant long-haul authority to a

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select number of Mexican motor carriers and require FMCSA to review every participating truck that crosses the border. FMCSA provided project details in May 1 and June 8, 2007, Federal Register notices.

On June 19, 2007, the OIG announced its review of the demonstration project in response to requirements in the United States Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007. As required, the review will assess FMCSA's compliance with elements of Section 350 and determine whether the mechanisms established by FMCSA are sufficient to apply Federal motor carrier safety laws and regulations to Mexican motor carriers operating in the United States.

We have not yet reviewed all details of the demonstration project; however, our March 2007 congressional testimony¹⁶ cited our past and current work in this area and noted two project issues that require our additional review—the inspection of all project participants that cross the United States and Mexico border and the need for clear objectives, milestones, and measures of success. We will follow up on these observations during our planned audit work.

Inspection of all project participants could be problematic. FMCSA will need to establish good screening mechanisms at the border crossings, in cooperation with U.S. Customs and Border Protection, to ensure that long-haul trucks participating in the demonstration project are identified for required licensing checks and inspections from among the large number of commercial trucks entering the United States daily at each commercial crossing. FMCSA's Cross-Border Truck Safety Project states, "...every truck that crosses the border as part of the pilot will be checked—every truck, every time."

This could be problematic because, to identify project participants, FMCSA will need to simultaneously screen these vehicles among the high-volume commercial traffic crossing the border and continue to inspect other vehicles and drivers. This may require that FMCSA coordinate closely with U.S. Customs and Border Protection agents, who have initial border interaction and overall control of Mexican vehicles and drivers that enter the Customs and Border Protection facility where FMCSA is located. Otherwise, the commitment to "check every truck, every time" could be at risk.

Our observations at the Laredo crossing, one of the highest volume crossings in the United States, confirmed the challenge FMCSA faces in screening project participants. Specifically, we observed hundreds of vehicles entering the United States at the Laredo crossing each day. FMCSA inspectors selected vehicles for

¹⁶ OIG Testimony CC-2007-26 and CC-2007-29, "Status of Safety Requirements for Cross-Border Trucking With Mexico Under NAFTA," March 8, 2007 and March 13, 2007, respectively.

Findings

inspection from the line of trucks waiting to exit the border crossing. However, once an inspector selected a vehicle and diverted it for an inspection, no FMCSA personnel remained at the screening point to monitor carrier traffic. Either this practice needs to be changed, or other procedures for screening need to be developed for the project in coordination with the U.S. Customs and Border Protection. Changing present practices or developing other screening procedures would ensure that all project trucks are identified and diverted for inspection.

According to FMCSA, it is working with the U.S. Customs and Border Protection to modify the U.S. Customs and Border Protection Automated Commercial Environment system. This system receives advance electronic vehicle manifests from Mexican motor carriers before vehicles arrive at the border. One possible modification could include a check of Mexican motor carrier's operating authority and commercial driver license status. By performing pre-arrival checks of vehicles, inspectors could identify demonstration project vehicles that require inspection before they reach the border crossing. However, no timeline for implementation of this modification has been established.

The demonstration project needs clear objectives, milestones, and measures of success. The demonstration project could provide a good opportunity for FMCSA to test preparations made in response to Section 350 of the FY 2002 Act, evaluate the Agency's performance, and assess any risks posed by opening the border. However, in order to measure the success of the demonstration project, FMCSA should establish meaningful criteria for determining whether to open the border to a greater number of Mexican carriers at its conclusion.

Findings

RECOMMENDATIONS

We recommend that the FMCSA Administrator:

1. Improve the comprehensiveness and consistency of conviction data on Mexican commercial drivers in the 52nd State System by:
 - a. Ensuring that the corrective action plans on data reporting problems provided by Arizona, California, New Mexico, and Texas are completed as scheduled.
 - b. Developing a process to periodically (at least quarterly) identify and notify states of inconsistencies in 52nd State System data and ensure that states take immediate steps to correct the inconsistencies.
2. Ensure that adequate space is available to conduct bus inspections by working on a site-specific basis with the U.S. Customs and Border Protection to modify the Southern Border Commercial Bus Inspection Plan with respect to:
 - a. Providing adequate inspector coverage at the Lincoln-Juarez crossing in Laredo, Texas, during holidays or other periods of peak bus traffic.
 - b. Periodically determining the effectiveness of the bus inspection plan by surveying field personnel or through other methods.
3. Address our findings on issues that are not related to Section 350 by:
 - a. Implementing a policy on the use of vehicle model year to indicate compliance with vehicle safety standards and record vehicle identification numbers as part of a safety inspection.
 - b. Establishing an action plan, in coordination with other Department of Transportation offices, to address concerns regarding drug and alcohol testing of all Mexican commercial drivers.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

We provided FMCSA with a draft of this report on June 29, 2007. On July 18, 2007, FMCSA provided us with formal comments, which are contained in their entirety in the appendix. In its comments, FMCSA stated that it considers many of the findings and recommendations to be constructive and that it already has actions underway to address them. Additionally, FMCSA concurred with all the recommendations and identified a completed or planned action for each that we consider responsive to our recommendations. FMCSA comments on the recommendations and our response are summarized below. We plan to follow up on FMCSA's stated actions in future audit work.

Recommendation 1.a: In response to the recommendation to ensure that corrective action plans on data reporting problems are completed as scheduled, FMCSA stated that Texas and New Mexico have successfully completed their corrective action plans. The remaining southern border states, California and Arizona, will complete their corrective action plans by August 30, 2007.

OIG Response: We consider FMCSA's comments to be responsive.

Recommendation 1.b: In response to the recommendation to develop a process to identify and notify states of inconsistencies in data, FMCSA stated that it is working to obtain monthly 52nd State System data monitoring reports and will periodically identify and notify states of inconsistencies it finds. These monitoring reports will be sent to all FMCSA Division Administrators detailing any inconsistencies along with guidance on tracking the correction of inconsistencies. This is planned to be completed by August 31, 2007.

OIG Response: We consider FMCSA's comments to be responsive.

Recommendation 2.a: In response to the recommendation to ensure that adequate space is available to conduct inspections, FMCSA stated that it will modify the Texas Commercial Bus Inspection Plan, working with the Texas Department of Public Safety and U.S. Customs and Border Protection to ensure adequate coverage at the Lincoln-Juarez crossing at Laredo, Texas, during periods of peak bus traffic. This is planned to be completed by December 31, 2007.

OIG Response: We consider FMCSA's comments to be responsive.

Recommendation 2.b: In response to the recommendation to work on site-specific basis with the U.S. Customs and Border Protection to determine the effectiveness of the bus inspection plan, FMCSA stated that it will review the

effectiveness of the bus inspection plan. It also stated that it has provided funding to the Texas Transportation Institute, Texas A&M University, to review bus activities and operations at the southern border crossings. FMCSA anticipates completing this action by April 1, 2008.

OIG Response: We consider FMCSA's comments to be responsive.

Recommendation 3.a: In response to our recommendation to implement a policy on the use of vehicle model year to indicate compliance with vehicle safety manufacturing standards, FMCSA stated that it is revising system software so that an automatic reminder appears during inspection and prompts inspectors to enter the vehicle identification number for all long-haul, Mexico-domiciled motor carriers. FMCSA is also issuing a policy requiring inspectors to complete the vehicle identification number field for all long-haul Mexico-domiciled carriers. This action is scheduled to be completed by October 1, 2007.

OIG Response: We consider FMCSA's comments to be responsive.

Recommendation 3.b: In response to our recommendation to establish an action plan to address drug and alcohol testing of all Mexican commercial drivers, FMCSA stated it is working closely with the Department's Office of Drug and Alcohol Policy and Compliance to conduct audits of various drug collection facilities operated in Mexico. These audits will be completed by September 1, 2007. Additionally, the Office of Drug and Alcohol Policy and Compliance has worked with the Government of Mexico to ensure that the policies, procedures, and forms used in the Mexico-controlled substance and alcohol testing program are consistent with and meet U.S. requirements. Further, FMCSA will be working with the Office of Drug and Alcohol Policy and Compliance to establish an action plan to periodically audit Mexico collection sites and the laboratory to determine whether they meet U.S. requirements. This action plan will be completed by December 31, 2007.

OIG Response: We consider FMCSA's comments to be responsive.

ACTIONS REQUIRED

The actions taken and planned by FMCSA are reasonable and subject to the follow-up requirements of Department of Transportation Order 8000.1C until the final actions are completed.

We appreciate the courtesies and cooperation of representatives from FMSCA, the states, and the organizations visited and contacted during this audit. If you have any questions concerning this report, please call me at (202) 493-0331 or Joe Com e, Program Director, at (202) 366-0377.

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EXHIBIT A. OBJECTIVE, SCOPE, AND METHODOLOGY

OBJECTIVE

The objective of this audit was to assess the actions FMCSA took in response to the findings and recommendations in our January 3, 2005, report, "Follow-up Audit of the Implementation of the North American Free Trade Agreement's Cross-Border Trucking Provisions." In addition, we determined whether FMCSA has the staff, facilities, equipment, and procedures in place to comply with FY 2002 Transportation and Related Agencies Appropriations Act, Section 350 (c) (1) (A) through (H). Exhibit C details the Section 350 criteria that the OIG is required to review.

SCOPE AND METHODOLOGY

This performance audit was conducted from March 2006 through July 2007 in accordance with Generally Accepted Government Auditing Standards as prescribed by the Comptroller General of the United States. We performed such tests as we considered necessary to detect fraud, waste, and abuse.

To prevent unnecessary duplication of prior reviews, we limited our audit testing for the eight Section 350 criteria subject to OIG review. This was due to the in-depth audit coverage of earlier reviews (summarized in exhibit D) and the absence of any significant change in granting of long-haul authority to Mexican motor carriers during the period covered by this audit. We relied on our analysis of selected FMCSA data and documentation; interviews with FMCSA officials, selected state officials, and other officials; and observations of operations at the World Trade Bridge border crossing, in Laredo, Texas, to provide assurances that the conditions previously reported remain the same. Additionally, we reviewed FMCSA's promised actions in response to our previous report to determine whether those actions had resulted in changes in any conditions we previously reported. Further details on our methodology are provided below.

Staffing Issues

Our review included analyzing border staff rosters and payroll lists to determine the current FMCSA inspection staff stationed along the southern border. We verified payroll lists by interviewing 10 randomly selected border inspectors regarding their employment and inspection responsibilities and obtaining reports of two inspections they conducted in 2006.

Observations at Laredo, Texas, Border Crossing

During our visit to the World Trade Bridge border crossing and inspection facilities in Laredo, Texas, we relied on the technical assistance of an independent contractor with extensive law enforcement and vehicle inspection experience. We observed the overall operations at the crossing and motor vehicle and driver inspections; observed inspection-related equipment; and interviewed officials from FMCSA, U.S. Customs and Border Protection, and the state to determine: (1) the current roles and procedures they used to permit the entry of Mexican motor carriers into the United States and their subsequent operations beyond the entry point, (2) the working relationships between border staff of the different agencies at this crossing, (3) actions taken in response to our 2005 report recommendations, and (4) inspection procedures and certifications.

Inspection Data

We independently obtained data from FMCSA's Motor Carrier Management Information System (MCMIS) as of February 8, 2006, to determine the number of inspections conducted, broken out into inspection level as described below, and computed the vehicle and driver out-of-service (OOS) rates for the United States, Mexico, and Central America for FYs 2004 through 2006 and compared those rates to rates for FYs 1999 through 2003, which we reported in our 2005 audit.

- Level I—North American Standard inspection; includes a vehicle and driver inspection and a physical inspection of the underside of the vehicle.
- Level II—Walk-around vehicle and driver inspection; does not include underside of the vehicle.
- Level III—Driver only.
- Level IV—Special inspection; usually a one-time inspection of a particular item.
- Level V—Vehicle only.

To calculate vehicle OOS rates, we used Levels I, II, and V. To calculate the driver OOS rate, we used Levels I, II, and III. We performed a limited assessment of the general and application controls for MCMIS, as the nature of the data we used was mainly for informational reporting purposes. We selectively analyzed data to test for completeness in certain data fields. We also reconciled motor carrier addresses in inspection records to verify that these were addresses for active carriers.

Review of Prior Findings and Recommendations

To review the specific actions FMCSA has taken in response to recommendations in our 2005 audit report, we provided FMCSA with a document containing our understanding of the promised actions and outstanding issues associated with the 2005 report. FMCSA reviewed the document and provided a written response. We further met with FMCSA to discuss the current status of its actions and the precondition agreements or other understandings and to obtain further documentation. To verify whether FMCSA was providing appropriate support and coordination related to NAFTA issues, we also interviewed officials from the Transportation Security Administration (TSA) and the Department's Office of Drug and Alcohol Policy and Compliance.

To follow up on our recommendation to provide comprehensive data for monitoring Mexican commercial drivers, we reviewed FMCSA and contractor reports addressing the architecture, operation, and data quality of the two systems used to monitor Mexican commercial drivers' records—Mexico's Licencia Federal Information System and FMCSA's 52nd State System. We further analyzed data quality reports; interviewed the contractor, TML Information Services, which was responsible for operating the 52nd State System; and reviewed contract provisions for operation of the 52nd State System. We also reviewed established state and FMCSA milestones for improving the reporting from individual states into the 52nd State System.

To follow up on our recommendation to improve bus inspections at border crossings, we assessed FMCSA's February 2006 Southern Border Commercial Bus Inspection Plan, which were implemented after issuance of our 2005 audit, to determine whether they provided steps that would ensure adequate bus inspection coverage at southern border crossings in Arizona, California, New Mexico, and Texas. Using MCMIS inspection data, we also determined the number of bus inspections in the four southern border states in FY 2004 through 2006. We compared the information obtained at the Laredo border crossing to the bus inspection plan covering Texas.

To follow up on our recommendation to ensure that all states are enforcing the 2002 operating authority rule, we contacted 14 judgmentally selected state law enforcement officials and 3 FMCSA state program staff to ascertain whether law enforcement personnel in those states: (1) had been able to access to resources that provide operating authority status, (2) had enforced the operating authority rule by putting violators out of service, and (3) had made any improvements in their ability to enforce the operating authority rule since our 2005 audit. We also reviewed related Commercial Vehicle Safety Alliance training course materials. To clarify California's use of the operating authority rule, we reviewed past and

Exhibit A. Objective, Scope, and Methodology

present California statutes regarding operating authority violations, interviewed California state enforcement officials regarding past and present operating authority rule enforcement, and analyzed MCMIS data to determine how many operating authority violations California reported from FY 2003 through 2005 and, of these, how many resulted in an OOS order.

To follow up on our recommendation regarding weigh-in-motion scale operation and maintenance, we reviewed weigh-in-motion scale maintenance plans contained in the Commercial Vehicle Safety Plans from Arizona, California, and Texas. New Mexico does not have one of the 10 highest volume crossings that would require a weigh-in-motion scale under the FY 2002 Act. We also inspected the weigh-in-motion scales located at the World Trade Bridge border crossings at Laredo, Texas.

Our prior audit noted that FMCSA had initiated a rulemaking requiring labels on all commercial vehicles operating in the United States to show compliance with Federal Motor Vehicle Safety Standards. To follow up on the requirement, we reviewed FMCSA's rulemaking, public comments, draft report to Congress, and its subsequent rulemaking withdrawal notice. We analyzed MCMIS data to determine whether the vehicle identification number field was being populated in MCMIS, although it was not required on completed inspection forms.

We verified that a replacement inspection facility was operational and hosting inspections at the Eagle Pass border crossing in Eagle Pass, Texas, by reviewing FMCSA staffing data.

EXHIBIT B. STATUS OF SECTION 350 CRITERIA SUBJECT TO OIG REVIEW AND PRIOR REPORT RECOMMENDATIONS

Status of Section 350 Criteria the OIG Is Required to Review

Our January 2005 report concluded that FMCSA had sufficient staff, facilities, equipment, and procedures in place to substantially meet the eight Section 350 (c)(1) criteria. See Exhibit C for details on the criteria and Section 350 requirements. As shown in table 3, the report made four recommendations to FMCSA, which addressed actions relevant to the eight Section 350 criteria. Our analysis of FMCSA's actions on these recommendations is discussed in the findings section of this report.

Table 3. Section 350 (c)(1)(A) through (H) Criteria Subject to OIG Review and 2005 OIG Report Recommendations

- (A) **Filling** and providing **training** for inspection positions.
- (B) **Training** inspectors conducting on-site reviews as safety specialists.
- (C) Not **transferring** inspectors to fill positions.
- (D) Implementing an **hours of service** policy.
- (E) Having a sufficiently accurate, accessible, and integrated **information infrastructure** and adequate **telecommunications** links.
- (F) Having adequate **capacity** at southern border to conduct meaningful inspections.
 - ✓ **Bus Inspections:** Recommended revising policies, procedures, staffing, and facility plans for bus coverage consistent with FMCSA policy for vehicle and driver inspections for Mexican commercial vehicles granted long-haul authority.
 - ✓ **Weigh-in-Motion Scales Maintenance:** Recommended identifying actions and milestones needed to make all scales fully operable.
- (G) Having sufficient **databases** to allow **safety monitoring** of Mexican carriers and drivers.
 - ✓ **52nd State System:** Recommended ensuring the establishment of a comprehensive system for monitoring Mexican motor carrier drivers.
- (H) Measures ensuring **effective enforcement** and monitoring of Mexican carrier licensing.
 - ✓ **Operating Authority Rule:** Recommended ensuring that all states adopt and fully comply with the August 2002 rule on enforcing operating authority.

The following provides the results of our review of each Section 350 (c)(1) criteria subject to our review and details FMCSA's actions taken in response to our 2005 report recommendations that are not discussed in the finding section of this report.

Staffing, Training, and Transfer Restrictions of Inspectors (Criteria A, B, and C): FMCSA reported that 93 percent, or 254 of 274 Federal enforcement

personnel positions authorized at the United States-Mexico border were filled as of June 2006 and hiring efforts are ongoing.¹⁷ This represents a slight decrease from the 95 percent of filled positions we reported in our January 2005 report. In our opinion, this decrease is still within an acceptable range to meet Section 350 (c)(1)(A) staffing criteria, given normal attrition and FMCSA's continuing recruitment efforts. In addition to the 254 FMCSA enforcement personnel currently working at the southern border, 347 federally subsidized state inspectors are at United States-Mexico border crossings. Table 4 shows a breakout of the FMCSA personnel and their locations along the southern border.

Table 4. Location of FMCSA Personnel at the United States-Mexico Border

Staff Position	Arizona	California	New Mexico	Texas	Total
Inspector	27	10	6	85	128
Auditor	6	14	0	29	49
Investigator	3	12	0	32	47
Supervisor	6	5	1	7	19
Support Staff	2	3	0	6	11
Total	44	44	7	159	254
Source: OIG analysis of June 2006 FMCSA Border Staff Roster.					

According to FMCSA officials, all enforcement personnel at the United States-Mexico commercial border crossings, both Federal and state, have the proper training to meet Section 350 (c)(1)(A) inspection training criteria. Additionally, those personnel are trained as safety specialists to conduct on-site reviews of Mexican motor carriers to meet Section 350 (c)(1)(B) safety specialist training criteria. Because there was a limited number of new hires since our last audit, we relied on the results of our past audit work in which we confirmed that inspectors were attending training, analyzed training class rosters, tested answer sheets, and reviewed personnel data. Further, consistent with the non-transfer criteria of Section 350 (c)(1)(C), our audit work found that, with one exception, none of the enforcement personnel hired for the United States-Mexico commercial border crossings were experienced FMCSA personnel transferred from other parts of the United States to fill these positions. The one exception was an in-state transfer that we do not consider significant.

¹⁷ Section 350 referred to the position 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. FMCSA established 274 positions as the target it needed to meet Section 350 criteria.

Further, as shown in Table 5, the total number of Mexican motor carrier commercial vehicle and driver inspections conducted in the United States in FY 2006 increased from FY 2005, and the average number of inspections per Mexican motor carrier increased.

Table 5. Number of U.S. Inspections of Motor Carrier Commercial Vehicles and Drivers by Carrier Domicile, FY 2004 Through FY 2006

Carrier Domicile by Fiscal Year		Inspections Conducted in United States	Carriers Inspected	Average Inspections per Carrier
United States	2006	2,554,280	314,486	8
	2005	2,338,692	290,236	8
	2004	2,332,137	277,362	8
Mexico	2006	211,106	4,617	46
	2005	193,540	4,597	42
	2004	164,342	5,007	33
Central America	2006	491	54	9
	2005	376	38	10
	2004	161	34	5
Source: OIG analysis of FMCSA's Motor Carrier Management Information System data.				

Our prior reports noted that, although the overall staffing at United States-Mexico commercial border crossings is satisfactory, FMCSA needs to periodically re-evaluate its overall resource requirements for the United States-Mexico border to meet actual conditions. This evaluation should include staffing levels, the experience levels of inspection staff, and the distribution of the staff at crossings. We plan to look at this during our upcoming review of the demonstration project.

Hours-of-Service Policy (Criteria D): FMCSA meets the hours-of-service policy criteria of Section 350 (c)(1)(D). FMCSA has issued policy guidance requiring safety auditors to verify hours-of-service compliance for Mexican motor carriers seeking authority to operate outside municipal and commercial zones. Additionally, our observations of border inspections found that FMCSA inspections were conducted in accordance with CVSA inspection criteria, which include reviewing drivers' hours-of-service records.

Information and Telecommunications (Criteria E): FMCSA provides an integrated information infrastructure and telecommunications links to meet the criteria. As we found during our 2005 audit and our observations at the two sites in Laredo, Texas, FMCSA's integrated information infrastructure and telecommunications links are in place and sufficiently accessible to inspectors to satisfy the related criteria of Section 350 (c)(1)(E). For example, we observed that the sites have computer internet access, telephone service, and use of linked wireless hand-held electronic devices, such as Personal Digital Assistants.

Exhibit B. Status of Section 350 Criteria Subject to OIG Review and Prior Report Recommendations

Capacity To Conduct Meaningful Inspections at the Southern Border (Criteria F): According to FMCSA, there are 28 FMCSA inspection sites and 15 state inspection sites along the southern border that are either fully staffed or contain equipped inspection facilities that can be staffed when needed.¹⁸ FMCSA officials stated that some inspection sites might be improved or supported with mobile operation vans to provide additional inspection capacity. Our current audit found that FMCSA continues to have the capacity to conduct meaningful inspections at the southern border, by providing sufficient inspection facilities and equipment to meet Section 350(c)(1)(F) criteria, with the exception of Mexican bus inspection issues. Further, our prior audit recommendation to ensure that operable weigh-in-motion scales were available at the 10 highest-volume crossings has been met. The bus inspection issue and actions taken in response to our January 2005 report regarding bus inspections and weigh-in-motion scales are discussed in the findings section of this report.

Sufficiently Comprehensive Data for Monitoring Motor Carriers and Drivers (Criteria G): Section 350(c)(1)(G) states that a database containing “sufficiently comprehensive data” must be accessible for monitoring all Mexican motor carriers and their drivers that apply for authority to operate beyond the municipal and commercial zones on the United States-Mexico border. In this audit, we concentrated on re-examining the data inconsistencies noted with Mexican motor carrier driver records and the actions FMCSA has taken in regards to its 52nd State System. This system contains records of traffic violations Mexican commercial drivers commit in the United States. We also examined inconsistencies with Mexico’s Licencia Federal Information System, which contains records showing Mexican motor carrier commercial drivers with valid, disqualified, or expired licenses. Our audit found that the same systems enforcement officials use to monitor both Mexican carriers and drivers, which we identified in our 2005 audit, are still in place to meet the Section 350 criteria. However, data from the 52nd State System covering Mexican driver records in the United States were incomplete. This issue is discussed further in the findings section of this report, as is the status of Mexico’s information system.

Effective Enforcement (Criteria H): Section 350 (c)(1)(H), requires that measures be in place for ensuring “effective enforcement” of Mexican motor carriers. Our 2005 audit reported that five states had yet to adopt FMCSA’s August 2002 interim final rule on enforcing operating authority, which would require states to place Mexican motor carrier vehicles out of service for violations of specific Federal motor carrier regulations.¹⁹ Our audit found that FMCSA’s

¹⁸ Our 2005 report noted 27 FMCSA inspection sites and separately reported that at two crossings commercial volume was not sufficient to merit full-time inspection coverage or dedicated inspection facilities. However, according to FMCSA, inspectors were available “on-call” to provide coverage.

¹⁹ The final rule was issued on August 28, 2006 (71 FR 50862).

actions addressed our prior recommendation to ensure that all states adopt and comply with the rule. We confirmed that the five states without operating authority have now adopted the rule or as with California, were using an equivalent rule. Instead of putting a violator out of service, California can either fine the violator \$1,000 or order the violator to return the vehicle to the country of origin. In addition to assessing a fine against violators, California may also impound the vehicle and its cargo until the fine and impoundment charges are paid. FMCSA has stated that it considers California's requirement that the vehicle be impounded to be compatible with its rule, but to ensure that all violators are placed out of service, California is moving to adopt and include FMCSA's criteria. As a result, all states can now place vehicles out of service or take equivalent action for operating authority violations. See the report findings for remaining concerns we have with states obtaining information regarding the status of carrier operating authority.

Status of Other January 2005 Report Issues Relating to Mexican Motor Carrier Cross-Border Trucking

The remaining five areas identified in the January 2005 report are addressed below. They include recommendations for two preconditions set forth elsewhere in Section 350 of the FY 2002 Act, one recommendation for an area not specifically included in Section 350 but related to Mexican motor carrier cross-border safety issues, and two safety-related issues identified in the report but not reflected in the report recommendations.

We followed up on the detailed actions FMCSA outlined in response to other border operation safety issues identified in our January 2005 report not already covered in our report findings. Those actions included (1) reaching an agreement or understanding with the Government of Mexico to allow on-site inspections, (2) reaching an agreement on background checks on Mexican commercial drivers hauling hazardous materials, (3) improving the quality of available data on Mexican motor carriers, (4) recording of insurance information, and (5) replacing an inspection facility at Eagle Pass, Texas.

The Mexican Government will now allow on-site inspection of Mexican carriers. Our previous report noted that the FY 2002 Act Section 350 (a) prohibited FMCSA from using funds to review or process long-haul applications of Mexican motor carriers until after they meet certain preconditions involving on-site reviews. Section 350 requires that 50 percent of Mexican motor carriers applying for long-haul authority be inspected on-site.²⁰ On February 22, 2007, Secretary of Transportation announced that the Government of Mexico would

²⁰ In February 2007, FMCSA re-issued inspection guidance on pre-authority safety audits that included a requirement for its inspectors to notify Mexican government officials named in the guidance at least 15 days in advance of an on-site inspection.

allow on-site inspections of Mexican motor carriers. We plan to assess on-site reviews as they pertain to the announced project discussed in the findings section of this report.

A non-DOT program performs background checks on Mexican commercial drivers hauling hazardous materials. Section 350 (b) restricts any vehicle owned or leased by a Mexican motor carrier from hauling hazardous materials outside U.S. commercial zones in a placardable quantity. This restriction is in place until the United States and Mexico reach an agreement ensuring that Mexican drivers meet substantially the same qualifications as U.S. drivers hauling hazardous materials. Our 2005 report recommended that FMCSA facilitate the establishment of this agreement and 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.

Subsequent to our 2005 report, the August 2005 Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users²¹ (SAFETEA-LU) required background checks of Mexican and Canadian commercial drivers hauling hazardous materials that are equivalent to checks required to qualify U.S. commercial vehicle drivers. The Department of Homeland Security Transportation Security Administration implemented this requirement by ruling that the U.S. Customs and Border Protection Free and Secure Trade (FAST) program, which includes background checks of Mexican motor carriers, meets the background check requirements of SAFETEA-LU. According to the TSA, Mexican and Canadian drivers who do not or cannot obtain a FAST card will be prohibited from transporting hazardous materials in the United States. FAST went into affect on August 10, 2006. Without information regarding the scope of the processes the U.S. Customs and Border Protection used in performing background checks, we could not assess whether FAST is an equivalent alternative to the requirement of Section 350 (b). Because the TSA has taken the Federal lead in carrying out hazardous material background checks, our 2005 recommendation that FMCSA facilitate a background check agreement is closed. Further, according to FMCSA, it does not have a role in enforcing background checks on Mexican or Canadian motor carriers.

FMCSA issued guidance that should improve the quality of data on Mexican motor carriers. The effective monitoring of Mexican motor carriers over the long term will depend, in part, on the quality of the data obtained on their operations. Our 2005 report recommended that FMCSA establish pre-authority safety audit procedures to ensure Mexican motor carriers provide accurate information on power units and vehicle drivers. FMCSA uses this type of data in combination with other information, such as crash and inspection reports, to

²¹ Pub. L. No. 109-59 (2005).

identify for review those motor carriers that are a high risk. In February 2007, FMCSA issued pre-authorization safety audit guidance for Mexican motor carriers that requires safety auditors to collect information on carrier power units and vehicle drivers.

Because long-haul authority has not yet been granted to Mexican motor carriers, we are unable to confirm the implementation of these procedures. However, our April 2006 audit of the 1999 Motor Carrier Safety Improvement Act²² showed that the procedures FMCSA used during reviews of new entrant U.S. carriers, which are similar to those instituted by FMCSA for Mexican motor carriers, had reduced the instances of inaccurate and incomplete information, such as power unit data, in the FMCSA database. Therefore, the pre-authorization safety audit guidance may increase the reliability of Mexican motor carrier data once it is in use.

FMCSA plans to record insurance data of Mexican carriers in the United States after it starts processing long-haul authority applications. Our 2005 report recommended that FMCSA require Mexican motor carriers operating outside municipal and commercial zones to provide appropriate insurance information for inclusion in FMCSA's database. Adding insurance data to the database provides a means for enforcement officials to verify insurance coverage during an inspection. In response, FMCSA stated that it would address this recommendation when it begins processing Mexican motor carrier applications for long-haul authority. In the meantime, according to FMCSA, Mexican motor carriers must carry certificates of insurance in their commercial vehicles. These certificates are subject to review if the vehicle is stopped or inspected. We plan to review this issue as it pertains to the announced demonstration project.

The Eagle Pass inspection facility is operational. Our 2005 report noted that when the U.S. Customs and Border Protection planned the replacement of the Eagle Pass inspection facility in Texas, it did not include space for FMCSA inspections. FMCSA reported that the Eagle Pass inspection facilities are now operational. To verify that the facility is operational, we reviewed FMCSA staffing data. In Eagle Pass, as of August 2006, there were 3 FMCSA inspectors on the U.S. Customs and Border Protection compound and 19 state inspectors at a state location.

²² OIG Report Number MH-2006-046, "Significant Improvements in Motor Carrier Safety Program Since 1999 Act but Loopholes for Repeat Violators Need Closing," April 21, 2006.

EXHIBIT C. SECTION 350 REQUIREMENTS

With the signing of North American Free Trade Agreement 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 Secretary of Transportation indefinitely delayed implementation of NAFTA cross-border provisions, citing safety reasons.

Section 350 of the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 2002 and subsequent appropriation legislation prohibit FMCSA from using Federal funds to review or process Mexico-domiciled motor carrier applications to operate beyond the U.S. commercial zones until certain preconditions and safety requirements are met. Section 350 provisions, including the requirement for an annual review by our office, are summarized below and provided in more detail on the following pages.

- **Section 350 Preconditions for Allowing Reviewing or Processing of Mexican Long-Haul Applications:** FMCSA must meet a number of preconditions contained in Section 350 (a) before it can review or process Mexican motor carrier applications to operate as a long-haul carrier beyond the municipal and commercial zones at the southern border. This includes requiring on-site safety examinations of motor carriers in Mexico, in some instances.
- **Section 350 Precondition for Allowing Vehicles To Haul Hazardous Materials:** Section 350 (b) restricts vehicles owned or leased by Mexican motor carriers to transport hazardous materials beyond commercial zones until an agreement is reached between the United States and Mexico. This agreement must hold hazardous material drivers from both countries to substantially the same requirements.
- **Section 350 OIG Review and Secretary Certification of Border Operations:** Section 350 (c) prohibits Mexican motor carriers from operating beyond the commercial zone under conditional or permanent authority granted by FMCSA until two events occur. First, the OIG must conduct a review within the first 180 days of the law's enactment to verify whether or not eight criteria are met. These criteria 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. Second, the Secretary of Transportation must certify, in a manner addressing the OIG's findings, that opening of the border does not pose an unacceptable safety risk to the American public.

In November 2002, the Secretary of Transportation certified that opening the border does not pose an unacceptable risk to the American public. Although Section 350 (c) does not require the Secretary of Transportation to re-certify to the safety of opening the border after the initial certification, it does direct the OIG to perform annual reviews using the eight Section 350 (c) criteria. The OIG issued reports in June 2002, May 2003, and January 2005 that addressed the eight criteria and other border operations issues covered under the FY 2002 Act. See exhibit D for a summary of these reports. The full text of Section 350 follows:

**The Department of Transportation and Related Agencies
Appropriations Act for Fiscal Year 2002, Section 350, Safety of Cross-Border Trucking Between United States and Mexico**

Section 350 (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 on-site; 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 on-site 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 leaser 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.

Section 350 (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.

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

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

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

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

Exhibit C. Section 350 Requirements

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

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

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

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

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

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

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

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

Section 350 (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.

Section 350 (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.

EXHIBIT D. PRIOR AUDIT COVERAGE

OIG Report Number MH-2005-032, “Follow-up Audit of the Implementation of the North American Free Trade Agreement’s Cross-Border Trucking Provisions,” January 3, 2005

We reported that FMCSA had sufficient staff, facilities, equipment, and procedures in place to substantially meet the eight Section 350 safety criteria subject to OIG review in the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 2002 (the FY 2002 Act). However, until an agreement or other understanding related to on-site safety reviews was reached with Mexico, FMCSA could not, in our view, grant long-haul operating authority to any Mexican motor carrier. Additionally, given new background requirements for U.S. drivers applying for hazardous materials endorsements, an agreement would need to be in place with Mexico to cover similar background requirements for vehicles owned or leased by Mexican motor carriers hauling hazardous materials. While negotiations were being carried out with Mexico on these two issues, which were 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 scales, and the comprehensiveness of the data system used to monitor Mexican driver records in the United States.

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 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 Act 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.

OIG Report Number MH-2001-096, "Motor Carrier Safety at the U.S.-Mexico Border," September 21, 2001

Our audit 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

Our audit 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 United States 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 reported 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 entering the United States would 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.

EXHIBIT E. MAJOR CONTRIBUTORS TO THIS REPORT**THE FOLLOWING INDIVIDUALS CONTRIBUTED TO THIS REPORT.**

<u>Name</u>	<u>Title</u>
Joe Com�	Program Director
David Pouliott	Program Manager
Gerard Sheeran	Senior Auditor
Maurice Toval	Senior Auditor
Regan Maund	Analyst
Calvin Moore	Analyst

EXHIBIT F. LIST OF ABBREVIATIONS

The following is a guide to the abbreviations used in this report.

- **CVSA** – Commercial Vehicle Safety Alliance
- **DOT** – Department of Transportation
- **FAST** – Free and Secure Trade (U.S. Customs and Border Protection program)
- **FMCSA** - Federal Motor Carrier Safety Administration
- **FY 2002 Act** - The Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 2002
- **LIFIS** - Licencia Federal Information System
- **MCMIS** - Motor Carrier Management Information System
- **OIG** – Office of Inspector General
- **OOS** –Out-of-Service
- **NAFTA** – North American Free Trade Agreement
- **SAFETEA-LU** - Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users
- **TSA** – Transportation Security Administration

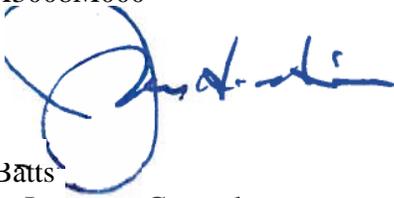
APPENDIX. MANAGEMENT COMMENTS



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

Memorandum

Subject: **INFORMATION:** Response to the Office of Inspector General's (OIG) Draft Report "Follow-up Audit of Status of Implementation of the North American Free Trade Agreement's Cross-Border Trucking Provisions" Project No. 06M3008M000 **Date:** JUL 18 2007

From: John H. Hill
Administrator 

To: Rebecca Anne Batts
Deputy Assistant Inspector General
for Surface and Maritime Programs **Reply to:** MC-E
Attn of: William A. Quade

This memorandum responds to your June 29, 2007, draft report titled, "Follow-up Audit of Status of Implementation of the North American Free Trade Agreement's Cross-Border Trucking Provisions." I have reviewed the report and provided responses to the recommendations below. I consider many of the findings and recommendations to be constructive and already have actions underway to address them. I look forward to working with the OIG in strengthening the cross-border trucking provisions.

RESPONSES TO SPECIFIC RECOMMENDATIONS

RECOMMENDATION 1a. *Improve the comprehensiveness and consistency of conviction data on Mexican commercial drivers in the 52nd State System as required by Section 350 criteria by ensuring that the corrective action plans on data reporting problems provided by Arizona, California, New Mexico, and Texas are completed as scheduled.*

Response: CONCUR. Texas and New Mexico have successfully completed their 52nd State System corrective action plans. California is on schedule to complete their plan by August 30, 2007. Arizona has developed an electronic process for uploading data to the 52nd State system and will have their corrective action plan completed by August 30, 2007.

RECOMMENDATION 1b. *Improve the comprehensiveness and consistency of conviction data on Mexican commercial drivers in the 52nd State System as required by Section 350 criteria by developing a process to periodically, at least quarterly, identify and notify States of inconsistencies in 52nd State System data and ensure States take immediate steps to correct the inconsistencies.*

Response: CONCUR. The Federal Motor Carrier Safety Administration (FMCSA) will continue to work with the contractor that operates the 52nd State System to develop and obtain monthly monitoring reports. The reports will be sent to all FMCSA Division Administrators (DAs) detailing any inconsistencies in data and a follow-up mechanism and guidance will be issued requiring DAs to track correction of inconsistencies in the 52nd State System. This will be completed by August 31, 2007.

RECOMMENDATION 2a. *Ensure that adequate space is available to conduct bus inspections as required by Section 350 criteria, by working on a site-specific basis with the U.S. Customs and Border Protection Service to modify the Southern Border Commercial Bus Inspection Plan to provide adequate inspector coverage at the Lincoln-Juarez crossing in Laredo, Texas, during holidays or other periods of peak bus traffic.*

Response: CONCUR. The Texas Division Office will review and modify, as necessary, their Bus Inspection plan to ensure adequate coverage at the Laredo-Juarez crossing during periods of peak bus traffic. This will be done in conjunction with the Texas Department of Public Safety and the U.S. Customs and Border Protection Service. The FMCSA anticipates completing this by December 31, 2007.

RECOMMENDATION 2b. *Ensure that adequate space is available to conduct bus inspections as required by Section 350 criteria, by working on a site-specific basis with the U.S. Customs and Border Protection Service to modify the Southern Border Commercial Bus Inspection Plan to periodically determine the effectiveness of the bus inspection plan by surveying field personnel or through other methods.*

Response: CONCUR. The FMCSA has provided funding to the Texas Transportation Institute, Texas A&M University, to conduct a review of bus activities and operations at the Southern border. Included in this review will be an analysis of staffing and facilities for bus crossings to ensure continued compliance with the Section 350 bus requirements. After completion of the review, FMCSA will initiate appropriate action to ensure continued compliance with Section 350 requirements relating to bus inspections. The review is expected to be completed by April 1, 2008.

RECOMMENDATION 3a. *Address our findings on issues that are not related to Section 350 by implementing a policy on the use of vehicle model year to indicate compliance with vehicle safety standards and recording of vehicle identification numbers as part of a safety inspection.*

Response: CONCUR. The FMCSA is revising the ASPEN software so an automatic reminder appears during inspections and prompts inspectors to enter the vehicle identification number (VIN) for all long-haul Mexico-domiciled motor carriers. The Agency will also issue a policy memorandum requiring inspectors to complete the VIN number field for all long-haul Mexico-domiciled motor carriers. The software includes a validation process that provides a warning to the inspector if the VIN is inaccurate, invalid or if the VIN indicates the vehicle was not manufactured in accordance with required safety standards. The revised software is currently being used by State and Federal inspectors. The FMCSA will reissue its enforcement policy for foreign-based motor carriers to include the noted change to the ASPEN software. This will be completed by October 1, 2007.

Appendix. Management Comments

RECOMMENDATION 3b. *Address our findings on issues that are not related to Section 350 by establishing an action plan, in coordination with other Department of Transportation offices, to address concerns regarding drug and alcohol testing of all Mexican commercial drivers.*

Response: CONCUR. The FMCSA is working closely with the Office of Drug and Alcohol Policy and Compliance (ODAPC), Office of the Secretary, to conduct audits of various drug collection facilities operated by the Government of Mexico. These audits will be completed by September 1, 2007. Additionally, ODAPC has worked closely with the Government of Mexico to ensure the policies, procedures and forms used in their governmental controlled substance and alcohol testing program are consistent with, and meet the requirements of, 49 CFR Part 40. All Mexico-domiciled motor carriers are required to have alcohol controlled substance testing programs that meet the requirements of 49 CFR Part 40. If the Mexican drug and alcohol collection sites and laboratory do not meet United States specification, the motor carrier will be required to use facilities in the United States that meet the requirements. Use of collection site and laboratory facilities that meet all United States requirements is verified during the pre-authorization safety audit and monitored during compliance reviews of the Mexico-domiciled motor carriers. Violations discovered during compliance reviews may result in enforcement action against the motor carriers.

The FMCSA will work with ODAPC to establish an action plan to periodically audit the Mexican collection sites and laboratory to determine if they meet United States requirements. This will be completed by December 31, 2007.

If you need additional information or clarification, please do not hesitate to contact me, or William A. Quade, Acting Associate Administrator for Enforcement and Program Delivery at 202-366-2172.

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

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

Section 508 Compliant Presentation

Figure 1. Number of FMCSA Border Inspectors

- The number of FMCSA border inspectors in FY 1998 was 13.
- The number of FMCSA border inspectors in June 2006 was 254.

Source: OIG

Figure 2. Percentage of Mexican Trucks Taken Out of Service

- Percent of Mexican trucks taken out of service in FY 1997 was 44 percent.
- Percent of Mexican trucks taken out of service in FY 2006 was 21 percent.

Source: OIG

Table 1. FY 2004-FY 2006 Out-of-Service Rates of United States, Mexico, and Central American Motor Carriers

Table 1, Item 1: Vehicle Out-of-Service Rates. This is the percentage of vehicles inspected and placed out of service due to safety or regulation violation.

- For the United States: In 2004, 22.6 percent were placed out of service. In 2005, 22.4 percent were placed out of service. In 2006, 22.3 percent were placed out of service.
- For Mexico: In 2004, 23.1 percent were placed out of service. In 2005, 20.4 percent were placed out of service. In 2006, 20.9 percent were placed out of service.
- For Central America: In 2004, 39.5 percent were placed out of service. In 2005, 28.3 percent were placed out of service. In 2006, 42.7 percent were placed out of service.

Table 1, Item 2: Driver Out-of-Service Rates. This is the percentage of drivers inspected and placed out of service due to a license violation.

- For the United States: In 2004, 6.8 percent were placed out of service. In 2005, 6.9 percent were placed out of service. In 2006, 7.3 percent were placed out of service.

- For Mexico: In 2004, 1.9 percent were placed out of service. In 2005, 1.1 percent were placed out of service. In 2006, 1.2 percent were placed out of service.
- For Central America: In 2004, 10.6 percent were placed out of service. In 2005, 4.8 percent were placed out of service. In 2006, 29.3 percent were placed out of service.

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

Our analysis noted 491 U.S. inspections in FY 2006 pertaining to Central American motor carriers. According to FMCSA, Central American carriers must comply with FMCSA safety requirements in the United States and New Entrant Safety Program rules specific to non-North American commercial motor carriers operating in the United States.

Table 2. 52nd State System Mexican Commercial Driver Convictions Since System Inception and for Beginning of 2006

- **52nd State System Mexican Driver Convictions Since System Inception March 2002 Through December 2005 (46 months), Southern Border States:** In Arizona, 20 convictions. In California, 28 convictions. In New Mexico, 291 convictions. In Texas, 4,677 convictions.
- **52nd State System Mexican Driver Convictions January 2006 to May 2006, (5 months) Southern Border States:** In Arizona, 27 convictions. In California, 6 convictions. In New Mexico, 0 convictions. In Texas, 2 convictions.

Source: OIG analysis of data from TML Information Services (52nd State System Contractor)

Figure 3. FMCSA Bus Inspection at Laredo, Texas, September 2006

Photograph shows two FMCSA inspectors inspecting a motor coach bus labeled "NORESTE" and "4632" at FMCSA's Laredo Bus Crossing inspection area. The bus has its rear back and right rear side panels open exposing the bus engine compartments. One FMCSA inspector is checking the right rear wheel area. The other FMCSA inspector is recording inspection data.

Source: OIG

Table 4. Location of FMCSA Personnel at the United States-Mexico Border in June 2006

- **Arizona FMCSA Staff Positions:** 27 Inspectors; 6 Auditors; 3 Investigators; 6 Supervisors; 2 Support Staff. Forty-four in total.
- **California FMCSA Staff Positions:** 10 Inspectors; 14 Auditors; 12 Investigators; 5 Supervisors; 3 Support Staff. Forty-four in total.
- **New Mexico FMCSA Staff Positions:** 6 Inspectors; 0 Auditors; 0 Investigators; 1 Supervisor; 0 Support Staff. Seven in total.
- **Texas FMCSA Staff Positions:** 85 Inspectors; 29 Auditors; 32 Investigators; 7 Supervisors; 6 Support Staff. One hundred fifty-nine in total.
- **Total FMCSA Personnel for all Border States:** 128 Inspectors; 49 Auditors; 47 Investigators; 19 Supervisors; 11 Support Staff. Two hundred fifty-four in total.

Source: OIG analysis of June 2006 FMCSA Border Staff Roster.

Table 5. Number of U.S. Inspections of Motor Carrier Commercial Vehicles and Drivers by Carrier Domicile, FY 2004 through FY 2006

Table 5, Item 1: Inspections for United States-Domiciled Motor Carriers

- In FY 2006, 2,554,280 inspections were conducted in the United States, 314,486 carriers were inspected, and the average number of inspections per carrier was 8.
- In FY 2005, 2,338,692 inspections were conducted in the United States, 290,236 carriers were inspected, and the average number of inspections per carrier was 8.
- In FY 2004, 2,332,137 inspections were conducted in the United States, 277,362 carriers were inspected, and the average number of inspections per carrier was 8.

Table 5, Item 2: Inspections for Mexico-Domiciled Motor Carriers

- In FY 2006, 211,106 inspections were conducted in the United States, 4,617 carriers were inspected, and the average number of inspections per carrier was 46.

- In FY 2005, 193,540 inspections were conducted in the United States, 4,597 carriers were inspected, and the average number of inspections per carrier was 42.
- In FY 2004, 164,342 inspections were conducted in the United States, 5,007 carriers were inspected, and the average number of inspections per carrier was 33.

Table 5, Item 3: Inspections for Central American-Domiciled Motor Carriers

- In FY 2006, 491 inspections were conducted in the United States, 54 carriers were inspected, and the average number of inspections per carrier was 9.
- In FY 2005, 376 inspections were conducted in the United States, 38 carriers were inspected, and the average number of inspections per carrier was 10.
- In FY 2004, 161 inspections were conducted in the United States, 34 carriers were inspected, and the average number of inspections per carrier was 5.

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