



**COMMENTS OF THE
TRANSPORTATION TRADES DEPARTMENT, AFL-CIO**

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
DEMONSTRATION PROJECT ON NAFTA TRUCKING PROVISIONS
SUPPLEMENTAL REQUEST FOR PUBLIC COMMENT
Docket No. FMCSA-2007-28055**

June 28, 2007

On behalf of the Transportation Trades Department, AFL-CIO (TTD)¹, we appreciate the opportunity to submit these comments on the Federal Motor Carrier Safety Administration's (FMCSA) Demonstration Project on NAFTA Trucking Provisions. TTD represents 32 affiliated transportation unions, including, the Amalgamated Transit Union (ATU), the United Transportation Union (UTU), as well as other unions who all have long been concerned about the highway safety issues raised by the North American Free Trade Agreement (NAFTA). Specifically, in other proceedings before Department of Transportation (DOT) on this subject we have submitted extensive comments describing the practical problems associated with the implementation of the transportation provisions of NAFTA. Unfortunately, FMCSA's demonstration project to open the border to commercial truck traffic beyond the commercial zone leaves too many critical safety and security issues unaddressed and we are therefore opposed to its implementation. From a TTD perspective, we are also concerned that this demonstration project will be used as a model for future efforts to open the border to intercity bus operations.

We are extremely concerned that the limited safety rules that are cited in the demonstration project are not sufficient and will not be adequately enforced. While we recognize that at this time FMCSA's demonstration project does not permit Mexico-domiciled motor carriers to transport hazardous materials or passengers, the requirement that basic safety and security procedures be in place and are followed, is absolutely imperative.

In fact, Congress has spoken repeatedly on this point and imposed specific safety conditions on any demonstration project in Section 6901(b)(2)(B) of the Iraq Accountability Appropriations Act of 2007. Simply stated the proposal from FMCSA does not meet these conditions. We should also note that the U.S. House of Representatives recently passed the Safe American

¹TTD, which consists of 32 affiliated unions, is the transportation labor umbrella of the AFL-CIO. A complete list of TTD affiliated unions is attached at 1.

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Roads Act (H.R. 1773) by a vote of 411 to 3 in direct response to the demonstration project contemplated by FMCSA. While we understand H.R. 1773 does not yet have the force of law, we would hope and expect that FMCSA would take the bill's mandates into account considering the strong, bi-partisan and overwhelming support the legislation has received. Finally, we remain concerned that the safety conditions placed on DOT by Section 350(c) of DOT's Fiscal Year 2002 Transportation Appropriations Act have not been met – a point recently reinforced by the DOT's Inspector General (IG) in front of the Senate Transportation Appropriations Subcommittee.²

FMCSA's proposal would allow Mexican drivers to enter and operate in the United States with a Mexican Commercial Driver's License, and by passing a drug and alcohol test administered by Mexican authorities and collection facilities. The problem with this approach is that FMCSA fails to adequately evaluate Mexico's CDL program and drug and alcohol testing procedures to ensure that it is indeed equivalent to U.S. rules. Congress specifically required DOT, before it allowed compliance with Mexican rules to be considered compliant with U.S. rules, to provide an "analysis as to how the corresponding United States and Mexican laws and regulations differ." FMCSA has not adequately met this specific requirement and thus cannot rely on Mexican rules and regulations to satisfy U.S. CDL and other safety requirements.³

DOT's IG stated in written testimony to the Senate that serious data problems were found in FMCSA's own repository of Mexican driver convictions that occur in the U.S., known as the 52nd State System.⁴ As State and local officials rely on this database for information regarding any violations that would disqualify a driver, faulty information will be a great impediment to their ability to effectively enforce safety rules that are supposedly a condition of this demonstration project.

We are also concerned that the demonstration project proposal does not discuss the possibilities of (or potential challenges that may exist in) working with other U.S. agencies that may be needed to protect the health and safety of the public. The implementation of this project will test the ability of the U.S. to handle the inspection and enforcement needs resulting from an increase in Mexican motor carrier traffic entering from across the border. The scope of this demonstration project must extend beyond the realm of FMCSA; it must involve the work of the Customs and Border Patrol, Transportation Security Administration (TSA), Immigrations and Customs Enforcement (ICE), the National Highway Transportation Safety Administration (NHTSA), and the Environmental Protection Agency (EPA). The cooperation of these agencies

² *Fiscal 2008 Budget for the Department of Transportation: Hearing Before the Subcomm. on Transportation, Housing and Urban Development, and Related Agencies of the Senate Comm. on Appropriations, 110th Congress (2007)*

³ It is worth noting that while FMCSA is prepared to accept the equivalency of Mexican CDL and other safety regulations, other government agencies have seemed hesitant, if not suspicious, when it comes to relying on data generated by Mexico. Specifically, TSA does not use the Mexican criminal database when issuing regulations to administer the Free and Secure Trade (FAST) commercial driver card and instead checks Mexican drivers against the U.S. criminal database. We find it disquieting that one agency (TSA) opts not to use Mexican criminal databases where it would seem fitting to do so, while another (FMCSA) chooses to rely almost entirely on the equivalency of Mexican regulations, while both agencies share the same goal – assuring the American public's health and safety on U.S. highways.

⁴ The 52nd State System is a database that allows U.S. officials to disqualify Mexican commercial drivers operating in the U.S. for the same offenses that would lead to the disqualification of a U.S. commercial driver.

is needed to monitor, enforce, and penalize any Mexican motor carrier violating the terms of this demonstration project once in the United States. FMCSA must address this problem before the motor carriers are permitted to operate under this demonstration project.

We must also point out that FMCSA has not sufficiently enforced its own regulations when it comes to the domestic curb-side bus industry operating in the United States, which jeopardizes public safety and allows companies to operate without meeting the same standards required of more established carriers like Greyhound. We therefore question whether FMCSA will be in a position to enforce regulations for motor carriers, and eventually inter-city buses, domiciled in a foreign country. This concern is augmented even further given the reliance FMCSA places on the equivalency of Mexican regulations, as explained earlier, to assure safety here in the United States.

FMCSA states that Mexican-domiciled trucks will not be allowed to engage in cabotage – point-to-point service within in the United States. This prohibition is indeed critical to the commercial viability of U.S. motor carrier and bus operations yet the demonstration project does not offer enough information on how FMCSA plans to effectively monitor, enforce, and penalize those who violate these restrictions. The reliance of FMCSA on state and local law enforcement agencies to detect cabotage violations is particularly worrisome. FMCSA does not detail how and if it will train local officials on cabotage or whether staffing is sufficient to take on this new responsibility.

For these reasons, we believe that the demonstration project proposed by FMCSA would expose U.S. highway users, including truck and bus drivers, to safety threats posed by expanding Mexican-domiciled motor carriers' access to U.S. highways. We ask that FMCSA takes our comments into consideration, reconsiders its proposal, and works with TTD and our affiliated unions to assure the safety of our nation's transportation system.

Respectfully submitted,



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TTD MEMBER UNIONS

The following labor organizations are members of and represented by the TTD:

Air Line Pilots Association (ALPA)
Amalgamated Transit Union (ATU)
American Federation of State, County and Municipal Employees (AFSCME)
American Federation of Teachers (AFT)
Association of Flight Attendants-CWA (AFA-CWA)
American Train Dispatchers Association (ATDA)
Brotherhood of Railroad Signalmen (BRS)
Communications Workers of America (CWA)
International Association of Fire Fighters (IAFF)
International Association of Machinists and Aerospace Workers (IAM)
International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers (IBB)
International Brotherhood of Electrical Workers (IBEW)
International Federation of Professional and Technical Engineers (IFPTE)
International Longshoremen's Association (ILA)
International Longshore and Warehouse Union (ILWU)
International Organization of Masters, Mates & Pilots, ILA (MM&P)
International Union of Operating Engineers (IUOE)
Laborers' International Union of North America (LIUNA)
Marine Engineers' Beneficial Association (MEBA)
National Air Traffic Controllers Association (NATCA)
National Association of Letter Carriers (NALC)
National Conference of Firemen and Oilers, SEIU (NCFO, SEIU)
National Federation of Public and Private Employees (NFOPAPE)
Office and Professional Employees International Union (OPEIU)
Professional Airways Systems Specialists (PASS)
Sailors' Union of the Pacific (SUP)
Sheet Metal Workers International Association (SMWIA)
Transportation · Communications International Union (TCU)
Transport Workers Union of America (TWU)
United Mine Workers of America (UMWA)
*United Steel, Paper and Forestry, Rubber, Manufacturing, Energy,
Allied Industrial and Service Workers International Union (USW)*
United Transportation Union (UTU)