



MOTOR CARRIER SAFETY ADVISORY COMMITTEE

C/O: Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Room W64-232
Washington, DC 20590

May 20, 2009

The Honorable Rose A. McMurray
Acting Deputy Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Acting Deputy Administrator McMurray:

The Motor Carrier Safety Advisory Committee (MCSAC) accepted Task 09-02 at its March 2009 meeting. Workgroup 09-02 was created to conduct work and was co-chaired by John Bauer and Lester Sokolowski. The workgroup was tasked with providing advice and guidance to FMCSA on essential elements that the Agency should include when drafting proposed legislation to permit Mexico-domiciled trucks beyond the current commercial zones along the U.S.-Mexico border.

The workgroup held conference calls, conducted work via e-mail, and met in person on May 18, 19, and 20, 2009. During the May 2009 meeting, the workgroup submitted a report to the Committee for review and approval. The Committee met in person in the requisite announced public meeting on May 20, 2009, discussed and approved the report, which identified the following four categories of elements to be addressed in proposed legislation:

- Program Design
- Enforcement
- Data Collection and Information Exchange
- Outreach and Education

Attached is the detailed report describing the elements under each category. I submit the enclosed report as recommendations to FMCSA for consideration.

Sincerely,

//signed//

David R. Parker
Chair
Motor Carrier Safety Advisory Committee

Enclosure

The Committee submits the following items, in no order of priority, as advice and guidance to be considered in the drafting of legislation to permit Mexico-domiciled trucks beyond the current commercial zones along the U.S.-Mexican border. The Committee emphasizes that transparency should be a guiding principle in program design, implementation, and evaluation. Additionally, if the legislative action is designated as a pilot program, it is recommended that the program comply with 49 U.S.C 31315(c).

Program Design

1. The Federal Motor Carrier Safety Administration (FMCSA) should implement a program that validates the safety of Mexico-domiciled trucks beyond the current commercial zones.
2. The program should include admission criteria, including successful completion of required screening before a motor carrier is issued authority to operate in the United States (e.g., Pre-Authorization Safety Audit [PASA]).
3. The program should include a statistically valid sample size and representative participants.
4. The program should be of adequate duration to achieve reliable conclusions and results.
5. The program design should consider scalability to ensure that the program can be broadly applied.
6. The transportation of security-sensitive hazardous material should be prohibited.
7. Oversight controls should be established (e.g., by the Department of Transportation [DOT] Office of Inspector General [OIG] or the Government Accountability Office [GAO]).
8. The program should be reviewed at intervals no more frequent than once per year.
9. The program design should include a pre-defined process for program modification.
10. All potential participant motor carriers should be vetted with the Department of Homeland Security (DHS) and Department of Justice (DOJ) for security risks.
11. Each participant motor carrier should be required to file and maintain proof of insurance before being granted operating authority.
12. The status of the motor carrier's insurance filing should be monitored to ensure that the insurance remains active, and an agent for service of process is maintained.
13. Each Mexico-domiciled motor carrier operating beyond the commercial zone should be given a distinctive USDOT number that must be visible on the front and side of each power unit.
14. Participating Mexico-domiciled commercial motor vehicles (CMV) drivers should be required to meet commercial driver's license (CDL) standards identical to U.S.-domiciled CMV drivers.
15. All participating CMV drivers must be subject to a complete background check through DHS, including fingerprinting, before being allowed to participate in the program.
16. Control measures should be implemented to protect the health and safety of both program participants and the general public pursuant to Sec. 4007 of the Transportation Equity Act for the Twenty-First Century (TEA-21).
17. Each participating CMV must be equipped with an electronic on-board recorder (EOBR) that is integrated with vehicle and transmission functions and hard-wired with the vehicle's electronic control module to collect real-time vehicle information.
18. No CMV manufactured before 1996 should be permitted for use in the program.
19. The program should be based on full compliance with all requirements specified by Sec. 350 of the DOT Appropriations Act of 2002, Pub. L. (107-87) (2001).

20. Prior notice and opportunity for public comment should be ensured after the completion of the following milestones:
 - a. Pre-program design
 - b. Mid-course review
 - c. Final report on the findings and proposed recommendations of the program
21. After due consideration of the public comments on the final report and making any appropriate modifications to the findings of the final report, FMCSA shall transmit the it to Congress together with its recommendations and make it available to the public.
22. FMCSA's website should include information that provides full transparency of program elements, status reports, evaluation reports, and other relevant materials.

Enforcement

1. Enforcement and compliance efforts of the program should reflect that drivers' actions contribute to crashes involving CMVs.
2. The program should include a plan for implementing a threshold for vehicle/driver inspections at the border.
3. The program should include a drug and alcohol testing program for participants, including mandatory participation in a random testing program, similar to Canadian cross-border drivers.
4. Mexico's specimen collection procedural requirements should be equivalent to those specified in 49 CFR part 40.
5. Criteria should be established for the removal of both drivers and companies from the program.
6. Driver, vehicle, and carriers should comply with all applicable U.S. federal/state laws (e.g., emission standards, FMVSS [Federal Motor Vehicle Safety Standards] manufacturing standards, English proficiency by demonstration rather than self-certification, knowledge of rules and regulations, 49 CFR part 396).
7. Participants should be required to use hard-wired EOBRs for purposes of tracking hours of service (HOS). Global Positioning System (GPS) devices and services should be required for all power units operated by the Mexico-domiciled participant motor carriers in order to monitor the vehicles as they operate in both the United States and Mexico. Data from the GPS system should be used to monitor compliance with HOS rules for drivers while operating in the United States. Data from the GPS system should be used to monitor the participating carriers for cabotage. GPS systems should be required to be high-security, tamper-resistant systems.
8. Compliance reviews should be conducted within 12 months after the start of each participant motor carrier's operations.
9. Reciprocal compliance regarding hazardous materials regulations, including security plan requirements, should be ensured.

Data Collection and Information Exchange

1. U.S. authorities need access to information on the following activities in Mexico:
 - a. Out of Service (OOS) placements (both driver and vehicle)
 - b. Crashes
 - c. Vehicle miles traveled
 - d. Traffic enforcement (e.g., violations and convictions).
 - e. Information about trucks or drivers themselves (e.g., driver's record in Mexico)
 - f. Convictions of U.S. drivers in Mexico
2. The integrity and accuracy of the Mexican system for monitoring and recording inspections, crashes, and traffic violations within Mexico should be ensured, as well as access to that system by U.S. authorities.
3. All Mexican CDL holders subject to the North American OOS criteria should include all data in the Comprehensive Safety Analysis (CSA) 2010 database.
4. FMCSA must be granted access to Automated Commercial Environment (ACE) program information at DHS and other systems as necessary for the safety and security of the border.

Education and Outreach

1. The following summarizes the target audience for education and outreach, as well as the type of information that should be relayed to that audience:
 - a. Mexican carriers
 - i. Program design
 - ii. FMCSA's Education and Technical Assistance (ETA) package
 - b. Law enforcement (Federal, state, and local)
 - i. Enforcement of laws on international carriers (e.g., operating authority, cabotage, language proficiency)
 - c. Judiciary
 - i. Awareness of legal ramifications of American court actions
 - ii. Awareness of data availability
 - d. Public
 - i. Program design
 - ii. Program results and data
2. All appropriate steps should be taken to maximize dissemination of information about this project to the public.
3. Federal laws and regulations of the Mexican and Canadian governments regarding motor carrier, CMV, and driver standards for transporting freight should be published on FMCSA's website, including all physical and medical driver requirements; standards for licensure; drug and alcohol testing; HOS governing the duty time and responsibilities of commercial drivers; and other relevant Mexican and Canadian standards and regulations compared with U.S. motor carrier, CMV, and driver standards and regulations.