United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

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May 12, 2011

The Honorable Ray LaHood
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

The Honorable Ron Kirk
Ambassador
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Secretary LaHood and Ambassador Kirk:

I write to express my long-standing concerns with allowing Mexican-based motor carriers to operate beyond the border's commercial zones and with the Administration's pilot program proposal. This pilot program would endanger U.S. companies' competitiveness at a time when our Nation continues to recover from the worst economic recession since the Great Depression. It is not clear if we can accurately track the safety performance of participating Mexican carriers. Further, the program would divert U.S. taxpayer dollars away from critical motor carrier safety efforts in order to help Mexican carriers participate in the program. Finally, it fails to eliminate all of the retaliatory Mexican trade and business practices.

The North American Free Trade Agreement (NAFTA) was intended to allow both U.S. and Mexican companies to equally benefit from enhanced international trade and investment efforts. At the time NAFTA was ratified, many warned that freely opening our trade borders would negatively impact U.S. businesses, and I am concerned that the Administration's pilot program would do just that.

Overall, U.S. trucking firms stand to gain little by this long-haul cross-border trucking program. U.S. trucking firms have little incentive to provide long-haul services into Mexico due to criminal activity in that country that put their drivers' personal safety and their loads at risk. Mexico's generally poor driving conditions make traveling a safety risk as well. Also, Mexican carriers pay their drivers significantly less than their U.S. counterparts, giving them a cost advantage over their American counterparts in the short-term.

On the other hand, the program would benefit Mexican carriers because they of their enhanced access to the U.S. market. The Bureau of Transportation Statistics reports that the total value of merchandise shipped between the United States and Mexico was $347.3 million in 2007. Trucks transported 66 percent of these shipments, with the United States exporting $93 million and importing $137 million of merchandise. Mexican carriers dominate the cross border trucking services market, and many Mexican carriers that provide drayage service across the border are well positioned to conduct day trips outside the commercial zone should the pilot program move forward. Combine this with Mexican carrier's lower labor costs and an excess of trucking capacity in Mexico, and U.S. trucking firms would be put at a competitive disadvantage within their own country to Mexican-based carriers.

The Administration has stated that the more than 600 Federal and State employees currently overseeing the safety of trucks entering the U.S. commercial zones will be sufficient to ensure the safety of Mexican trucks participating in the long-haul program, too. I am not convinced. Under the previous pilot program, the Independent Evaluation Panel's (IEP) examination of Federal Motor Carrier Safety Administration's (FMCSA) Motor Carrier Management Information System inspection records found that about 20 carriers that were only permitted to operate within the commercial border zone were inspected in 12 states beyond the commercial zone. Further, the IEP's 2008 Report urged the Department of Transportation (DOT) to carefully monitor the adequacy of its staffing, inspection equipment, and other resource needs to ensure that Mexican carriers and drivers engaged in long-haul operations comply with U.S. safety rules. Considering the Administration's goal to increase participation in the program, it is not clear to me why the Administration views its current border crossing workforce as sufficient to also administer this new pilot program and if we would have the budgetary resources going forward to successfully administer an increased pilot program.

Further, I am not confident that FMCSA will be able to accurately track the safety performance of participating Mexican carriers and drivers. The FMCSA will be reliant upon the Mexican government's data for the safety records for all applicant Mexican carriers. However, Mexico has several public institutions at the federal, state, and local levels that deal with traffic accidents and the coordination and interactions of these agencies impact the efficient gathering of crash information on all roads. As a result, traffic accidents can be underestimated and/or underreported. For example, the IEP reported that accident information is more comprehensive on Mexico's federal road network and less complete on state and municipal road networks. Additionally, deficiencies in Mexico's safety regime, such as the lack of certified laboratories to test driver's drug and alcohol samples, concern me that Mexican drivers allowed to operate in the United States would not have the same level of safety oversight as a U.S. driver. Finally, the DOT Inspector General (IG) cited concerns with states' inconsistent reporting of traffic convictions incurred by holders of Mexican driver's licenses to the Mexican Conviction Database under the previous pilot program. I am not convinced that this proposal make proper assurances that traffic reporting requirements and monitoring procedures would prevent the possibility that Mexican Federal commercial driver's license holders operating in the United States could also legally hold another Mexican-issued driver's license or being allowed to continue driving in the United States after incurring a disqualifying traffic offense.

In addition, the Administration's proposal to use U.S. taxpayer dollars to equip participating Mexican carriers with safety technologies—such as electronic on-board recorders (EOBRs)—is inappropriate. The FMCSA is currently working to mandate EOBRs on all US carriers, and its resources should be devoted toward getting the final rule in place, not equipping Mexican carriers. Once the mandate is in place, there will be no need for the U.S. government to pay for the EOBRs. U.S. carriers will be responsible for paying the costs to meet this mandate, and Mexican carriers should not be treated any differently in terms of meeting this—as well as any other safety or environmental—mandate.

Finally, I am dismayed that the Administration has not required the Mexican government to end all retaliatory trade practices as a precondition for restarting the pilot program. While Mexico has agreed to eliminate $2.6 billion in tariffs on U.S. imports should the cross-border program move forward, the Mexican government has not yet agreed to remove the barrier to U.S. companies investing in Mexican bus companies that provide domestic service in Mexico, despite the fact that the United States allows Mexican companies the same investment opportunities in the U.S. domestic bus market. Once again, U.S. companies will be put at a competitive disadvantage. The United States should require Mexico to end all retaliatory actions before restarting the pilot program.

The cross-border long-haul trucking program must be done in a way that does not hurt U.S. companies or have a negative impact on safety. I must feel confident that this new proposal has addressed all my concerns before I can support its implementation.

Sincerely,

Jay Rockefeller

John D. Rockefeller, IV
Chairman
Senate Committee on Commerce, Science,
and Transportation