

**Before the Committee on Commerce, Science, and Transportation
United States Senate**

For Release on Delivery
Expected at
2:30 PM EDST
Tuesday
March 11, 2008
CC-2008-049

**Cross-Border Trucking
Demonstration Project**

**Statement of
The Honorable Calvin L. Scovel III
Inspector General
U.S. Department of Transportation**



Chairman Inouye, Vice Chairman Stevens, and Members of the Committee:

Thank you for the opportunity to testify today on our ongoing work regarding the Department of Transportation's (DOT) demonstration project for Mexican trucks. Over the past decade, we have issued over a dozen reports and testimonies on this highly charged topic. Our interim report on the demonstration project, from which this testimony is drawn, was issued on March 10, 2008.¹ We are to provide our final report 60 days after the conclusion of the project.

As you know, in February 2007, the Secretary of Transportation announced her intention to start a 1-year demonstration project to allow up to 100 Mexico-domiciled carriers to operate throughout the United States. Shortly afterward, in May 2007, Congress, set requirements² to be met before the project could actually start. One key requirement mandated that the Department, prior to initiating the project, take action to address any issues raised in an initial report required by our office, and report to Congress detailing such actions.

Our initial report on September 6, 2007,³ described how the Federal Motor Carrier Safety Administration (FMCSA) had implemented significant initiatives in preparation for the demonstration project. Through direct observations and analyses, our work verified that FMCSA was conducting promised on-site reviews at applicants' places of business in Mexico. Additionally, we reported that safety mechanisms, such as truck inspections at border crossings, remained in place. Further, our interviews with key state enforcement personnel showed FMCSA's general readiness to enforce safety rules during the demonstration project, although officials in five states said they were not yet ready.

Our initial report emphasized three issues that the Department needed to address to Congress before initiating the project. These were:

- Ensuring that adequate plans were in place to carry out the Department's commitment to check every participating truck every time it crossed the border into the United States (including a quality control plan to ensure the system is effective).
- Ensuring that state enforcement officials understood how to implement guidance on the demonstration project and that training initiatives filtered down to roadside inspectors.

¹ OIG Report Number MH-2008-040, "Interim Report on NAFTA Cross-Border Trucking Demonstration Project," March 10, 2008. OIG reports and testimonies can be found on our website: www.oig.dot.gov.

² Section 6901 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Public Law 110-28).

³ OIG Report Number MH-2007-065, "Issues Pertaining to the Proposed NAFTA Cross-Border Trucking Demonstration Project," September 6, 2007.

- Addressing our determination that FMCSA had implemented policies, rules, and regulations that differed slightly from the language in 3 of 34 specific congressional requirements. For this third area, the most significant variation was limiting inspections during on-site safety reviews to those trucks that were available at the site at the time of the inspection, rather than all vehicles planned for use in the United States. We did not identify any safety impacts arising from this difference as long as the commitment to *check every participating truck every time* it crossed the border was fulfilled.

To address our issues, the Department included, in its response to Congress, Commercial Truck Border Crossing Implementation Plans for 25 U.S.-Mexico Border Crossings. The plans were designed to ensure that every participating truck is checked every time it crosses the border into the United States. The response also provided FMCSA's outreach plan designed to ensure that state enforcement personnel have the information needed to oversee the safety of trucks participating in the demonstration project. Finally, FMCSA agreed to address the three areas that differed slightly from the congressional requirements, including instituting a policy of reviewing all vehicles planned for use in the United States.

As required by the May legislation, our ongoing audit is verifying the degree to which these actions are being carried out. We are specifically charged with examining mechanisms established to determine whether the demonstration project is adversely affecting motor carrier safety, reviewing Federal and state monitoring and enforcement activities, and assessing the degree to which the demonstration project consists of a representative and adequate sample of Mexico-domiciled carriers likely to engage in long-haul operations.

While our mandate is to address those specific issues required by Congress, we are mindful of the legal questions currently before the 9th Circuit Court of Appeals. Among those is the question of the legal effect of the language contained in the FY 2008 Appropriations Act⁴—"None of the funds made available under this Act may be used to establish a cross-border motor carrier demonstration program...." In my view, after reading the Senate floor debate from early September, it is clear that the sponsors of the amendment to the Senate fiscal year 2008 Transportation and Housing Appropriations bill in September 2007 wanted to halt the project by denying funding. The parties to the court action in the 9th Circuit have briefed and orally argued the interpretation of the language in the underlying Consolidated Appropriations Act itself. Given that this matter is joined before the 9th Circuit and is outside my mandate, I will respectfully defer to that body's judgment.

⁴ Consolidated Appropriations Act, 2008, Public Law 110-161, Division K, Title I, Section 136, (2007).

Given our legislative requirements to review and monitor the demonstration project, our ongoing audit will continue. Accordingly, as the year-long demonstration project reaches its 6-month point, today we make the following three interim observations.

First, FMCSA has implemented plans to ensure every truck is checked every time it crosses the border, but it has not implemented a key quality control to ensure that checks are being done, despite a commitment to do so. As stated in our September 2007 report, these checks are important because they review the driver's license to ensure that the vehicle is driven by a licensed driver and verify that the truck has an inspection decal issued by the Commercial Vehicle Safety Alliance (CVSA). We verified that FMCSA had developed 25 site-specific border-crossing plans in conjunction with U.S. Customs and Border Protection (CBP) personnel to carry out these checks at the border, and FMCSA's records showed about 3,700 checks were done since the demonstration project began in September. However, FMCSA has not implemented a quality control measure that is important for ensuring the reliability and completeness of this information, even though FMCSA committed to do so in its September 6, 2007, letter report to Congress.⁵

In the report, FMCSA stated that it would acquire crossing data from CBP and perform a monthly analysis of a random sample of the data to document the extent to which FMCSA was meeting its goal of checking every truck every time it crossed the border. Further, if issues were identified, it would develop strategies to address them. *At this time, FMCSA has not implemented this process.* According to a FMCSA official, FMCSA is still gathering information for this control. Until FMCSA implements a quality control check using CBP, or another valid source of data, to establish a baseline for the number of crossings, FMCSA will not have assurance that all checks are being conducted as required. Further, to the degree that others use this information to develop conclusions about the demonstration project, errors and omissions in crossing data would adversely affect the analysis. We will give this issue greater scrutiny as our audit continues.

Second, the limited data available at this time means we cannot draw any meaningful conclusions about the safety performance of the demonstration project participants. Far fewer carriers and vehicles have participated in the project than expected, and over 90 percent of recorded trips by participants are inside the commercial zones. As of March 6, 2008, 19 Mexican carriers had been granted authority for the project instead of the 100 anticipated, and 1 of those has recently withdrawn. The number of vehicles that had been involved as of February 25, 2008, is also significantly lower than anticipated, about 13 percent of the number estimated before the project began. Also, as of that same date, only

⁵ Enclosure 4 of the Department's September 6, 2007, letter report to Congress.

247 trips beyond the commercial zone were recorded on FMCSA's records, and almost 90 percent of those trips were reportedly going to one state—California.

Our analysis of the small group of participating carriers shows that they are representative of certain characteristics of prior Mexican applicants, such as the number of vehicles. Although no crashes involving a participant had been recorded on FMCSA's records from the project's initiation through March 1, 2008, the limited number of participants and limited safety-related data will prevent FMCSA from drawing any meaningful conclusions at this time.

Third, FMCSA has taken actions to establish and enhance mechanisms for assessing adverse safety impacts from the project and for monitoring and enforcing safety rules for project participants. These actions include establishing and providing information to an independent panel⁶ charged with determining whether the safety performance of participating Mexican carriers differs from the safety performance of U.S. carriers. However, the independent panel has also expressed concerns that the low number of participants will affect its ability to draw meaningful conclusions from the data about the safety performance of the demonstration project participants.

FMCSA's actions have also included providing guidance and training to state officials. In five states where officials had previously told us they were not ready to enforce the rules of the demonstration project, officials advised that they were now ready, citing the additional training and guidance received from FMCSA. FMCSA is also recording insurance information from participant carriers, contracting for a GPS tracking system for participating vehicles, taking steps to improve data on Mexican driver convictions in the United States, and monitoring Mexican carrier records. We will continue to monitor and review these areas as the audit continues.

The balance of my statement discusses these issues in further detail.

FMCSA Has Not Implemented a Key Quality Control for Ensuring That Checks of Drivers and Vehicles Crossing the Border Occur as Planned, Despite a Commitment To Do So

FMCSA's policy requires that CVSA decals, driver's licenses, and proficiency in the English language be checked for project participants at each border crossing regardless of whether the truck is staying within the commercial zone or traveling beyond. This has been referred to as "checking every truck every time." We verified that FMCSA had developed 25 site-specific border crossing plans in

⁶ The panel includes former U.S. Representative, Jim Kolbe; former Department of Transportation (DOT) Deputy Secretary, Mortimer Downey; and former DOT Inspector General, Kenneth Mead.

conjunction with CBP personnel to carry out these checks at the border, and FMCSA's records as of February 25, 2008, showed that 3,680 checks were conducted. However, a key quality control for ensuring the reliability and completeness of this information has not been implemented even though FMCSA had committed to do so in its September 6, 2007, letter report to Congress.⁷

FMCSA reported to Congress that it would acquire crossing data from CBP and perform a monthly analysis of a random 10 percent sample of the data to reconcile CBP data against FMCSA's records. A monthly report of the results would provide details on each border crossing and identify any issues related to checking every vehicle every time as well as including strategies to address those issues. The overall purpose of the quality control plan was to document the extent to which FMCSA was meeting its goal of checking every truck every time it crossed the border. However, according to a FMCSA official, FMCSA is still gathering information for this control. Until FMCSA implements a quality control check using CBP, or another valid source of data, to establish a baseline for the number of crossings, FMCSA will not have assurance that all checks are being conducted as required.

In addition to ensuring that all vehicles and drivers are checked, it is also important that accurate information be recorded during the checks to facilitate the evaluation of the project. We examined FMCSA's records for about 2,000 truck crossings for participants that occurred through January 5, 2008. To date, we have identified 44 FMCSA crossing records that had unclear or incomplete responses, such as stating "not applicable" for recording a primary CVSA decal number or leaving blank the space for English proficiency testing. To the degree that the Independent Evaluation Panel uses this information for its work, errors and omissions in crossing data would adversely affect the panel's analysis. We will obtain updated data and conduct additional analyses as the project continues.

The Limited Data Available at This Time Means We Cannot Draw Any Meaningful Conclusions About the Safety Performance of the Demonstration Project Participants

Immediately after issuing its report to Congress on September 6, 2007, the Department initiated the demonstration project by granting provisional authority to the first Mexico-domiciled carrier. However, far fewer carriers than anticipated are participating in the demonstration project. As of March 6 of this year, 19 Mexican carriers have been granted provisional authority, one of which withdrew⁸ on February 1, 2008. By contrast, in April 2007, the Department had

⁷ Enclosure 4 of the Department's September 6, 2007, letter report to Congress.

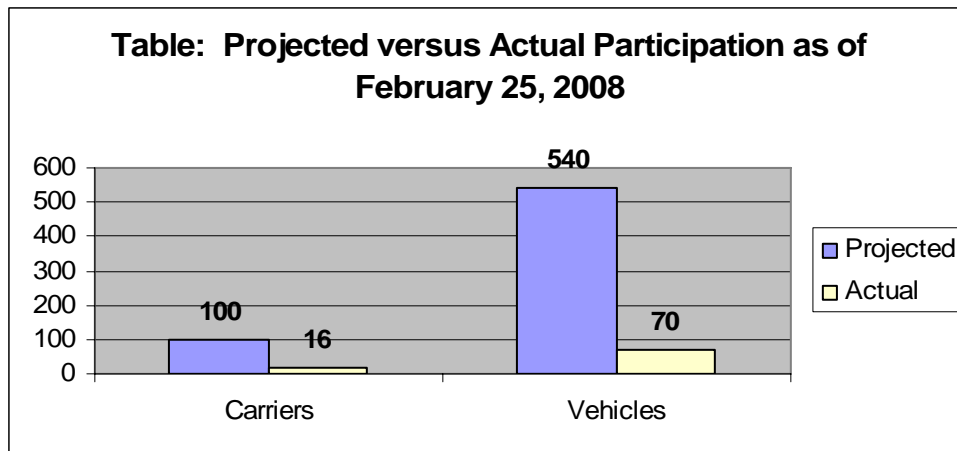
⁸ The carrier that withdrew, Trinity Industries de Mexico S de R L de CV, had identified 16 vehicles for use in the project, the largest number of all demonstration project participants at the time it withdrew.

anticipated granting provisional authority to 25 carriers each month, until the number reached 100.

According to FMCSA records, an additional 28 carriers have qualified for the program, but they have not filed the required proof of insurance. Even if those carriers were to file the required insurance proof and were granted provisional authority, the total number of Mexican carriers would reach only 47—just under half of the 100 carriers originally envisioned.

FMCSA records also show that fewer vehicles than originally estimated are involved in the project and only a small number of trips are going beyond the commercial zones. In August 2007, FMCSA estimated that, based on the number of vehicles approved at that time, 540 vehicles would be participating in the project if 100 Mexican carriers eventually received provisional authority. By contrast, as of February 25, 2008, only 70 vehicles were identified by the 16 Mexican carriers⁹ who had participated up to that point, including the carrier that dropped out. FMCSA’s records, as of February 25, 2008, showed 3,680 crossings into the United States by project participants, with 247 or 6.7 percent listing destinations beyond the commercial zones. About 90 percent of the recorded trips beyond the commercial zones were going to a single state—California.

The table below compares the projected and actual carrier and vehicle participation.



Source: OIG Analysis of FMCSA data. Data are for carriers granted provisional authority as of February 25, 2008.

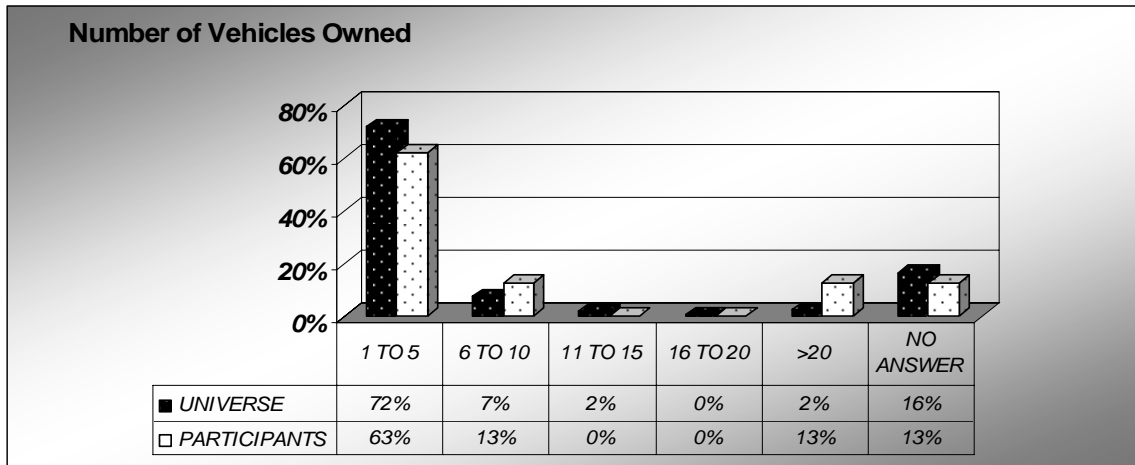
⁹ According to FMCSA data, 19 carriers had received provisional authority as of March 6, 2008. We limited our analyses to the 16 Mexican carriers that had received authority as of February 25, 2008, including the carrier that withdrew from the project on February 1, 2008. We did not include in our analysis data related to the three carriers admitted to the project after February 25, 2008.

Although we have not independently verified the information, according to FMCSA officials and press reports, factors such as the additional costs of insurance, the uncertainty of the project, and the burdens associated with increased reviews at the border may have played a role in the limited participation of Mexican carriers.

The current number of participants is not adequate to make statistically reliable projections or estimates of some important characteristics, including safety characteristics such as the number of crashes that could be expected involving long-haul Mexican carriers. The carriers currently¹⁰ participating in the project represent about 2 percent of the 723 original applications for the long-haul authority that FMCSA provided us. Nonetheless, our analysis of the first 16 carriers that participated in the demonstration project shows that for certain other characteristics, such as number of vehicles reported, the demonstration project participants appear to be representative of a larger group of Mexican carriers that have applied for long-haul authority in the United States over the past 10 years.

For example, the figure below compares the number of vehicles operated by demonstration project participants and the universe of the 723 long-haul applicants. This figure is based on answers supplied by the 723 applicants in their application packages to FMCSA and on the answers the demonstration project participants supplied on their individual applications.

Figure: Comparison of Number of Vehicles for Project Participants to Universe of 723 Prior Long-Haul Applicants



Source: OIG Analysis of FMCSA data

¹⁰ As of March 6, 2008.

We Will Continue To Review and Monitor FMCSA Actions To Establish and Enhance Mechanisms for Assessing Adverse Safety Impacts From the Project and for Monitoring and Enforcing Safety Rules for Project Participants

To its credit, FMCSA has taken actions to help ensure that participants comply with safety regulations and project requirements. Based on our interim observations as the year-long demonstration project reaches its 6-month point, we plan future work in the following areas.

Guidance for and Training of State Enforcement Officials. FMCSA has provided guidance and training for state enforcement officials. We obtained information showing that 421 state officials received further training on issues related to foreign motor carriers before and after the project was initiated. To assess the impact of these efforts, we followed up on the results of our September 6, 2007, report where we noted that officials in five states were of the opinion that they were not ready to enforce the requirements of the demonstration project. For this review, we re-contacted officials in those five states, and all now indicate that they are ready to enforce demonstration project requirements for Mexican carriers. Those officials cited completion of adequate training and receipt of FMCSA guidance as the primary reasons for their current readiness to enforce demonstration project requirements. We will continue to monitor FMCSA's training efforts as the project continues.

Insurance Requirements. FMCSA has recorded insurance information from project participants in an established database. Our independent examination of FMCSA's Licensing and Insurance System and our direct contact with the insurance companies showed that all Mexican carriers who were issued provisional authority as of February 4, 2008, had the required \$750,000 in bodily injury and property damage liability insurance. We will continue to verify that insurance is maintained by the participants as the demonstration project continues.

Mexican Conviction Database. FMCSA has established a Mexican Conviction Database to track traffic convictions of Mexican drivers occurring in the United States. FMCSA has provided us with data indicating that problems we identified in August 2007,¹¹ with the Mexican Conviction Database (formerly known as the 52nd State System) have been corrected by the states. We also verified that a report to help identify inconsistencies in the database was issued in January 2008. We will conduct further testing at the states as the audit continues.

¹¹ OIG Report Number MH-2007-062, "Follow-up Audit on the Implementation of the North American Free Trade Agreement's Cross-Border Trucking Provisions," August 6, 2007.

Global Positioning System (GPS). FMCSA has contracted with a company to place global positioning devices on all U.S. and Mexican trucks participating in the project; and FMCSA demonstrated to us how the system can identify the position of a particular truck. Data provided by FMCSA showed that as of February 21, 2008, 82 GPS units had been installed (38 on Mexican trucks and 44 on U.S. trucks) and plans were being finalized to install an additional 19 units (on 14 Mexican trucks and 5 U.S. trucks). As the demonstration project continues we plan to monitor the installation and use of GPS technology, particularly as it relates to cabotage and hours-of-service violations.

Mexican Carrier Monitoring System. Our previous audit work confirmed the establishment of a system for monitoring compliance of Mexican carriers operating in the United States. We obtained reports from this system for demonstration project participants, and we will continue to review these as the audit continues.

In closing, let me assure you that we will continue to closely monitor and review this demonstration project and to scrutinize other critical issues regarding the cross-border trucking provisions of the North American Free Trade Agreement (NAFTA), as required by Congress. The exhibit to our testimony provides a summary of our September 6, 2007, report on issues pertaining to the demonstration project and a list of our other prior reports and testimonies.

Mr. Chairman, this concludes my statement. I would be happy to answer any questions that you or other members of the Committee may have at this time.

EXHIBIT. PRIOR OIG REPORTS AND TESTIMONIES ON CROSS-BORDER TRUCKING ISSUES

Summary of our Latest Report

OIG Report No. MH-2007-065, “Issues Pertaining to the Proposed NAFTA Cross-Border Trucking Demonstration Project,” September 6, 2007.

We identified three issues pertaining to the proposed demonstration project.

First, FMCSA had not developed and implemented complete, coordinated plans for checking trucks and drivers participating in the demonstration project as they cross the border. Without having site-specific border crossing plans in place and fully coordinated with CBP and the state, the Department’s commitment to check every demonstration project truck every time it crosses the border into the United States is at risk. We also stated that these plans should include quality control measures to ensure that FMCSA’s system for checking each demonstration project truck is effective. These checks are important because they review the driver’s license to ensure that the vehicle is driven by a licensed driver and verify that the truck has a current inspection decal issued by the CVSA. This decal shows that the vehicle received a safety inspection in the previous 3 months.

Second, we reported that a considerable number (26 of 50) of state officials, responsible for coordinating motor carrier safety programs, expressed one or more concerns about the demonstration project, and officials in 5 states indicated they were not ready to enforce demonstration project requirements. Despite issuing guidance and brochures on assessing English language proficiency; detailing cabotage rules, regulations, and procedures; and initiating a train-the-trainer program, state concerns indicated that FMCSA should develop a feedback mechanism to ensure that critical information reaches the roadside inspectors who enforce Federal safety rules.

Third, we found that FMCSA implemented 3 of 34 provisions in Section 350(a) of the FY 2002 Appropriations Act using language that differed slightly from what Congress had specified. The differences related to which trucks should be inspected during pre-authorization safety audits, which drivers should undergo electronic license checks at border crossings, and the inclusion of newer safety rules applicable to Mexican motor carriers.

Other Prior Reports and Testimonies

OIG Report No. MH-2007-062, "Follow-up Audit on the Implementation of the North American Free Trade Agreement's Cross-Border Trucking Provisions," August 6, 2007.

OIG Testimony, CC-2007-029, "Status of Safety Requirements for Cross-Border Trucking With Mexico Under NAFTA," March 13, 2007.

OIG Testimony, CC-2007-026, "Status of Safety Requirements for Cross-Border Trucking With Mexico Under NAFTA," March 8, 2007.

OIG Report No. 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 Report No. MH-2003-041, "Follow-up Audit on the Implementation of Commercial Vehicle Safety Requirements at the U.S.-Mexico Border," May 16, 2003.

OIG Testimony, CC-2002-179, "Implementation of Commercial Motor Carrier Safety Requirements at the U.S.-Mexico Border," June 27, 2002.

OIG Report No. MH-2002-094, "Implementation of Commercial Vehicle Safety Requirements at the U.S.-Mexico Border," June 25, 2002.

OIG Report No. MH-2001-096, "Motor Carrier Safety at the U.S.-Mexico Border," September 21, 2001.

OIG Testimony, CC-2001-244, "Motor Carrier Safety at the U.S.-Mexico Border," July 18, 2001.

OIG Report No. MH-2001-059, "Interim Report on Status of Implementing the North American Free Trade Agreement's Cross-Border Trucking Provisions," May 8, 2001.

OIG Report No. TR-2000-013, "Mexico-Domiciled Motor Carriers," November 4, 1999.

OIG Report No. TR-1999-034, "Motor Carrier Safety Program for Commercial Trucks at U.S. Borders," December 28, 1998.

OIG reports, testimonies, and correspondence can be accessed on the OIG website at www.oig.dot.gov .