Independent Evaluation Panel Report to the U.S. Secretary of Transportation

U.S.-Mexico Cross-Border Trucking Demonstration Project

October 2008



Hon. Mortimer L. Downey III, Hon. James T. Kolbe, and Hon. Kenneth M. Mead

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U.S.-MEXICO CROSS-BORDER TRUCKING DEMONSTRATION PROJECT

Hon. Mortimer L. Downey III, Hon. James T. Kolbe, and Hon. Kenneth M. Mead

October 31, 2008

LETTER TO SECRETARY MARY E. PETERS

Honorable Mary E. Peters
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

October 31, 2008

Dear Madam Secretary:

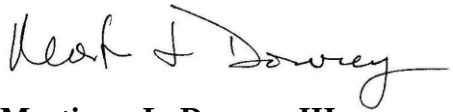
The members of the Independent Evaluation Panel are pleased to report our comprehensive evaluation of the Department's U.S.-Mexico Cross-Border Trucking Demonstration Project, which began on September 7, 2007. You charged us with the responsibility of independently reviewing this project for 12 months, assessing the implementation of U.S. motor carrier safety rules, and evaluating the compliance and safety record of Mexico-domiciled carriers and trucks operating in the United States under the project. You asked us to report to you 60 days after completing the data-collection phase of the project.

In response to your request, we examined how the Federal Motor Carrier Safety Administration (FMCSA) conducted the demonstration project within the context of the commitments the Department made about the project and the overall operation of Mexico-domiciled carriers in the United States. FMCSA, state safety enforcement officials, and Mexican officials were cooperative.

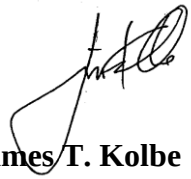
FMCSA and state safety enforcement officials reported no crashes involving Mexican carriers participating in the demonstration project. These carriers also had low out-of-service (OOS) rates. We found that a larger sample of carriers is needed to make a statistically significant comparison of safety performance between the project participants and project applicants. Nevertheless, our findings showed that the project participants had lower OOS rates relative to the OOS rates for all U.S.-domiciled trucks.

We were honored to serve on the Independent Evaluation Panel. We believe our observations will contribute toward enhancing FMCSA's safety enforcement mechanisms.

Sincerely,



Mortimer L. Downey III



James T. Kolbe

Kenneth M. Mead

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ABBREVIATIONS

CBP:	Customs and Border Protection
CDL:	Commercial driver's license
CDLIS:	Commercial Driver's License Information System
CVSA:	Commercial Vehicle Safety Alliance
DGAF:	Dirección General de Autotransporte Federal
DGPMPT:	Dirección General de Protección y Medicina Preventiva en el Transporte
EDMS:	Electronic Document Management System
FMCSA:	Federal Motor Carrier Safety Administration
GAO:	Government Accountability Office
HHS:	Department of Health and Human Services
IACP:	International Association of Chiefs of Police
ICC	Interstate Commerce Commission
L&I:	Licensing and Insurance
LIFIS:	Licencia Federal Information System
MCMIS:	Motor Carrier Management Information System
MCSAP:	Motor Carrier Safety Assistance Program
NAFTA:	North American Free Trade Agreement
NHTSA:	National Highway Traffic Safety Administration
NPRM:	Notice of Proposed Rulemaking
ODAPC:	Office of Drug and Alcohol Policy and Compliance
OIG:	Office of Inspector General
OMB:	Office of Management and Budget
OOS:	Out of service
PASA:	Pre-Authority Safety Audit
PRA:	Paperwork Reduction Act
RITA:	Research and Innovative Technology Administration
SCT:	Secretaría de Comunicaciones y Transportes
TSI:	Transportation Safety Institute
USDOT:	U.S. Department of Transportation

ACKNOWLEDGMENTS

The members of the Independent Evaluation Panel for the U.S.-Mexico Cross-Border Trucking Demonstration Project appreciate the many transportation safety professionals who contributed to our efforts. Our thanks to the state safety enforcement officials, especially from Arizona, California, New Mexico, and Texas; officials of Mexico's Secretaría de Comunicaciones y Transportes; members of the National Transportation Safety Board; and U.S. Customs and Border Protection staff. We also appreciate the cooperation of the U.S. Department of Transportation.

The responsibility for the findings and observations of this report rests solely with the Independent Evaluation Panel.

Major Contributors

Felix Ammah-Tagoe, Ph.D.	*Project Manager and Technical Lead*
Sarah Musler	*Project Executive Director*
Santokh Singh, Ph.D.	*Senior Statistician*
Stephen Pelletier	*Senior Technical Writer*
Dean Trackman	*Editor*
Shana Johnson	*Research Associate*

Other Contributors

Transportation Safety Institute

E-Ternational Research Consulting

URC Enterprises, Inc.

John A. Volpe National Transportation Systems Center

Consolidated Safety Services, Inc.

Cahill Swift, LLC

Charles T. Phillips

Clinton Magby

Cover and Graphic Designer

Alpha Glass Wingfield

EXECUTIVE SUMMARY

As requested by the Secretary, this report presents the results of our independent evaluation of the U.S.-Mexico Cross-Border Trucking Demonstration Project. Our mission was to assess how the Federal Motor Carrier Safety Administration (FMCSA) implemented U.S. motor carrier safety policies and regulations for this 12-month project and to evaluate the safety performance of Mexico-domiciled carriers operating beyond the border commercial zone in the United States as part of the project.[1]

This report covers our assessment of the project, our analysis of the safety record of the project participants, and our overall observations about the project. Our evaluation covered only the U.S. side of the project, reviewing Mexican carriers operating on U.S. highways, *not* U.S. carriers operating in Mexico. In order to provide a means for comparing the safety performance of the Mexican carriers participating in the project with that of other Mexican carriers operating in the United States, we also reviewed the safety records both of Mexican carriers that have limited long-haul authority to operate between specific points beyond the U.S. border commercial zone and of Mexican carriers that have authority to operate only within the commercial zone.[2]

As agreed, our review did not include examining security matters, environmental concerns, or customs and immigration issues. We had periodic meetings with the U.S. Department of Transportation's Office of Inspector General, which was undertaking a parallel review.

In light of the Department's announcement on August 6, 2008, to extend the demonstration project by another two years, we present these findings and observations for your consideration.

Level of Participation. We found that the level of participation fell far short of what the Department had projected and that most of the demonstration trucks operated only within the border zone. Only 29 Mexican carriers, not the 100 carriers that FMCSA projected, were granted long-haul operating authority (OP-1) during the 12 months to travel beyond the border commercial zone. Two of the carriers dropped out of the project. FMCSA records indicate that 2 of the remaining 27 carriers never crossed into the United States. As a result, only 25 Mexico-domiciled carriers participated in the project. The participant

[1] The commercial zone at the U.S.-Mexico border generally extends from 3 to 25 miles north of the border.
[2] The Mexican carriers with limited long-haul authority operate under U.S. provisions that were in place before the North American Free Trade Agreement went into force in 1994. They receive certificates of registration to operate within specific states beyond the commercial zone. FMCSA refers to these carriers as "grandfathered" and "certificated" carriers.

carriers operated about 100 trucks, far fewer than the 500 trucks that had been expected to participate in the project.[3]

U.S. and Mexican officials cited uncertainty regarding whether the operating authority granted to carriers in the project would continue and additional costs of insurance as the primary factors that limited the participation of Mexican carriers. The limited participation affected the Panel's ability to statistically compare the safety performance of participant Mexican carriers operating beyond the commercial border zone with the safety performance of Mexican carriers that applied for the project and are likely to engage in cross-border operations beyond the commercial zone.

Between September 7, 2007, and September 6, 2008, FMCSA records show that there were more than 12,000 truck crossings into the United States by the Mexican carriers participating in the project. Less than 15 percent of these OP-1 truck crossings were long-haul operations that went beyond the border commercial zone. Over 85 percent of the 12,000 crossings were to destinations *within* the commercial zone, and nearly all of these were to commercial zone locations in Texas and California.

Representativeness of Carrier Participants. When compared with the larger group of nearly 700 Mexican carriers that initially expressed interest in the project and applied for long-haul operating authority, the 27 participant carriers were similar in certain organizational characteristics. Our statistical analysis of the two groups showed no difference between them based on carrier business type, number of drivers reported, number of vehicles reported, and number of trailers reported. However, this does not indicate that the two groups are similar in safety performance. In addition, because the 27 carriers represent about 4 percent of the carriers that applied, the sample size was too small for making statistical projections from the participant Mexican carriers to the carriers who applied for the project and are likely to seek such long-haul operating authority in the future.

Crashes, Inspections, Violations, and Driver Convictions. FMCSA and state safety enforcement officials reported no crashes involving Mexico-domiciled trucks participating in the demonstration project. During the project, more than 7,000 safety inspections were conducted on the participant drivers and more than 1,400 safety inspections on the participant trucks, in addition to the every-truck-every-time checks done at the border-crossing facilities used by the OP-1 carriers.

Of the 7,000 driver safety inspections, 37, or less than 1 percent, resulted in out-of-service (OOS) violations. The driver OOS rate for the demonstration project carriers

[3] Our review focused on all the 27 carriers that remained in the project. In a few specific instances, we included the other two carriers that dropped out.

was lower than the rates of the grandfathered carriers and U.S.-domiciled carriers but similar to the rate for the border commercial zone carriers (Table ES-1).

Of the 1,400 vehicle safety inspections, 130, or 8.7 percent, resulted in OOS violations. By comparison, the vehicle OOS rate for the project participants was less than half the rates for the grandfathered carriers (24 percent), commercial zone carriers (22 percent), all U.S.-domiciled carriers (23 percent), and new-entrant U.S. motor carriers (28 percent) (Table ES-1).[4]

Table ES-1. Out-of-Service Rates for Demonstration Project Carriers, Other Mexican Carriers, and U.S.-Domiciled Carriers: September 7, 2007, to September 6, 2008

Carrier categories	Number of carriers	Driver OOS rate	Vehicle OOS rate
Demonstration project carriers	27	0.5%	8.7%
Grandfathered and certificated carriers	861	3.2%	23.8%
Border commercial zone carriers (2007)	7,000	1.0%	21.7%
All U.S.-domiciled carriers (2007)	690,000	7.2%	22.6%
U.S.-domiciled new-entrant carriers	71,000	13.3%	28.0%

SOURCE: Independent Evaluation Panel, based on MCMIS data that FMCSA provided to the Panel (project participant carriers, grandfathered carriers, and U.S.-domiciled new entrant carriers) and MCMIS data posted on FMCSA's website (border commercial zone carriers and U.S.-domiciled carriers).

In addition, we found that the participant carriers had OOS rates that were lower than the larger group of Mexican carriers that initially expressed interest in the demonstration project and are likely to seek long-haul operating authority in the future. However, FMCSA would need to collect data on a larger sample size of Mexican participant carriers in order to make statistically meaningful comparisons between the demonstration project carriers and the applicant carriers.

We found a total of 6 cases out of the more than 12,000 truck trips in which a demonstration project driver was convicted for a driving offense. FMCSA provided us with records of drivers' convictions from its Mexican Conviction Database for 2000 to 2008. Our review of the records shows that from September 7, 2007, to September 6, 2008, there were three cases in which a demonstration project driver was convicted for a driving offense. All three drivers worked for the same Mexican carrier. One of the convictions was for speeding 6 to 10 miles beyond the speed limit, and two were for general equipment failure, such as inoperable brake lights or insufficient tire tread. We also reviewed the conviction records for the demonstration project drivers in the

[4] Currently, all new U.S. motor carriers (private and for hire) operating in interstate commerce are required to apply for registration as a "new entrant" to receive a USDOT number.

Commercial Driver's License Information System (CDLIS) and found three additional convictions during this same period. These three convictions were for improper lane change and defective lights.

FMCSA's Conduct of Demonstration Project. Our work verified that FMCSA implemented policies and regulations regarding admitting Mexico-domiciled carriers into the demonstration project, establishing safety mechanisms at the border, ensuring enforcement of safety rules by state enforcement officials, and carrying out the Department's commitment to check every truck and every driver every time.[5] More specifically, we found that 1) the Pre-Authority Safety Audits (PASAs) were comprehensive and the agency conducted all the audits on-site in Mexico, 2) FMCSA honored its commitment to check every truck every time at the border, and 3) FMCSA provided state safety enforcement officers with guidance on enforcing safety requirements for the demonstration project.

With regard to the PASAs, in specifying the standards to be used to evaluate the demonstration project, FMCSA stated in a June 8, 2007, Federal Register notice that the Panel would review whether the agency detected violations of 11 critical safety regulations in any greater proportion than found in conducting new-entrant safety audits of U.S.-domiciled carriers. The agency also stated that "the FMCSA has determined that a violation of any of the following 11 critical regulations is so significant that it merits failure of the safety audit."[6]

We observed that FMCSA did find fewer violations of the 11 safety regulations among the Mexican carriers that passed the PASA than among the U.S. carriers that passed the new-entrant audits. About 6 percent, or 4, of 67 Mexican carriers had 1 of the 11 safety violations. In contrast, about 58 percent, or 7,314, of 12,673 U.S. new-entrant carriers had at least 1 of the 11 violations. However, we also found that although FMCSA followed the applicable regulations and statutory requirements for admitting Mexican carriers into the demonstration project, the agency did not implement its statement in the June 8, 2007, Federal Register notice that a violation of any of the 11 critical regulations is so significant that it merits failure of the safety audit. The 4 Mexican carriers that had 1

[5] FMCSA uses "checking a truck" and "inspecting a truck" differently. In this report, we do not use the terms interchangeably. For the demonstration project, FMCSA "checks" Mexican trucks only at the border-crossing facilities as they are entering the United States. This involves a federal inspector examining a driver's license to ensure the vehicle is being driven by a qualified driver and examining the inspection decal on the truck to ensure that it had been properly inspected within the past 90 days. FMCSA "inspects" trucks both at border-crossing facilities and along the roadside throughout the country. This involves both federal and state inspectors and covers the North American Standard Inspection. There are several levels of this inspection, ranging from the most comprehensive Level I (which covers both the driver and vehicle) to inspections with a specific focus, such as hazardous materials.

[6] 72 Federal Register 31883 (8 June 2007).

of the 11 safety violations passed the PASA, and three of these carriers subsequently participated in the project. These 4 carriers did not retain all of their drivers' logs in the company records, although they each had procedures for recording driver duty status. The statement in the notice created a situation where the agency did not do what the Federal Register notice said it was going to do in relation to its use of these 11 critical regulations in determining when a carrier passed or failed the safety audit. We asked FMCSA to explain this apparent discrepancy.

The agency said in its response to the Panel that it "failed to clearly articulate the basis for proposing that the Panel use the evaluation criteria described in the above referenced statements." FMCSA explained that the 11 regulations were identified in a Notice of Proposed Rulemaking (NPRM) published on December 21, 2006, for changing the evaluation criteria in the new-entrant safety audits conducted on U.S. and Canadian carriers.[7] The agency stated that it never intended to fail Mexican motor carriers in the demonstration project for noncompliance with any of the 11 safety regulations referenced in the notice, because it has no regulatory basis for doing so. It further noted that if the proposed amendments are finalized, it may then be necessary for FMCSA to amend regulations governing the PASA for Mexico-domiciled motor carriers to ensure consistency for all carriers operating in the United States. The agency expects a final rule on December 24, 2008.

Check Every Truck Every Time. The Department honored its commitment to check every truck every time, and FMCSA implemented a key quality-control plan to guarantee that Mexican carriers were checked, as the Department had committed to do. Our evaluation verified that FMCSA jointly developed 25 site-specific plans with U.S. Customs and Border Protection (CBP) to ensure that checks of Mexican trucks in the demonstration project would occur.

Key Quality-Control Plan to Ensure FMCSA Checked Every Truck Every Time. Though delayed until March 2008, FMCSA implemented a quality-control plan to ensure the effectiveness of the mechanisms they developed to check every truck every time. This quality-control measure was developed to provide the assurance that the checks FMCSA performed on vehicles and drivers at the border-crossing facilities were being done as planned. The agency provided us with documentation of the comparison they performed between their every-truck-every-time data and CBP border-crossing data. We did not independently verify their results with CBP. Additionally, the agency installed GPS tracking devices on 73 of the 101 trucks participating in the project. When fully mounted on all the participant trucks, the GPS devices will allow FMCSA to better use information from the devices in its quality-control plan.

[7] 71 Federal Register 76730 (21 December 2006).

English-Language Proficiency. FMCSA checked the English-language skills of Mexican drivers in the project. There are two components of FMCSA's protocols for implementing the U.S. federal motor carrier regulations requiring all commercial motor vehicle drivers to have sufficient English-language skills. First, they must be able to read and speak English sufficiently to converse with inspectors and the general public, respond to official inquiries, and make entries on reports and records. Second, they must be able to demonstrate that they understand the meaning of highway traffic signs and signals that are in English. For the demonstration project, FMCSA inspectors at the border tested Mexican drivers' proficiency in English by asking a series of verbal questions and requiring the drivers to respond in English. Inspectors separately tested comprehension of U.S. road signs by showing drivers a set of signs and having them respond in English or Spanish to indicate their understanding of the meaning of the signs. The fact that drivers could respond with a Spanish word to indicate their understanding of the meaning of a sign (for example, "stop" or "detour") in no way compromised their English proficiency, since their speaking and reading skills were tested separately in the verbal part of the test. Our review verified that FMCSA gave both tests to project participant drivers at the border-crossing facilities when they entered the United States. The agency also provided guidance to state inspectors on implementing these protocols.

Insurance. We independently reviewed the insurance information the demonstration project carriers submitted to FMCSA. We also contacted the five insurance companies that provided coverage for the 29 carriers that were granted OP-1 long-haul authority. We verified that all 29 Mexican carriers obtained the required minimum of $750,000 in bodily injury and property damage liability insurance before they received their long-haul operating authority. Of the 29 carriers, 24 had the minimum $750,000 of coverage, 4 had $1 million of coverage, and 1 had $5 million of coverage. We also found that 1 carrier allowed its insurance to lapse and subsequently operated illegally in the United States without insurance and without operating authority for a month. FMCSA took immediate corrective action when this carrier was caught. This incident presents an opportunity for the agency to improve its procedures for catching this type of violation at the border. Since this incident, the agency reports it has taken steps to update the insurance database that its field inspectors are required to use at the border during inspections to check for insurance coverage and operating authority.

Observation of Border Inspections. We conducted a comprehensive review of FMCSA's monitoring and enforcement mechanisms at the U.S.–Mexico border from February 2008 to August 2008. We directly observed FMCSA and state safety operations at 21 of the 25 commercial truck crossings at the southern border of the United States, including all the high-volume entry points, such as Laredo and Brownsville in Texas and Otay Mesa in California. We determined that FMCSA had adequate site-specific plans for the commercial truck crossings and for conducting the truck checks and inspections in

a manner consistent with the Department's commitments. Additionally, our review of the border-safety operations found that FMCSA had inspection equipment and the capacity to conduct meaningful truck inspections of the demonstration project trucks at the 21 border-crossing facilities our independent inspectors visited.

State Enforcement Officers' Implementation of Demonstration Project Guidance. FMCSA took steps to ensure project participant carriers' compliance with its motor carrier safety rules. These actions included ensuring that state enforcement officials were prepared to monitor the participant carriers and understood how to implement the demonstration project's policy guidance. We interviewed officials from 48 states and the District of Columbia. We verified state safety officials' understanding of the enforcement of demonstration project guidance and found states had received training and guidance from FMCSA on English-language proficiency assessment and requirements for placing Mexican vehicles out of service. From our interviews, it was clear that FMCSA prepared guidance and provided materials through the Motor Carrier Safety Assistance Program (MCSAP) coordinators for the states. Most of the states indicated that FMCSA guidance on the project had filtered to safety officers at the state motor carrier enforcement agencies. More than 30 states noted they had not encountered demonstration project trucks, and 8 states expressed concern about how to deal with nondemonstration project Mexican trucks that leave the commercial zone and operate illegally in their states.

Three Concurrent FMCSA Operating Authorities for Mexican Carriers Operating in the United States. We determined that there are far more Mexican carriers operating legally beyond the border commercial zone than there were in the demonstration project—861 versus 27. These other Mexican motor carriers have been operating legally beyond the commercial zone under authority granted between 1982 and 1994. We observed that FMCSA currently has three operating authorities for Mexican carriers to operate within the United States: 1) authority to operate under this demonstration project; 2) authority to operate within specific states or anywhere in the United States under pre–North American Free Trade Agreement (NAFTA) provisions; and 3) authority to operate within the border commercial zone. FMCSA's safety requirements for Mexican trucks to operate in the United States vary under these three operating authorities. For example, only demonstration project carriers are subject to the stringent and comprehensive Pre-Authority Safety Audit (PASA). We found that the percentage of vehicles placed out of service during the roadside safety inspections was 9 percent for the project trucks, 24 percent for the grandfathered carriers, and 22 percent for the commercial zone carriers.

Drug- and Alcohol-Policy Compliance. We determined that the PASAs conducted on Mexican carriers that applied for the demonstration project addressed U.S. drug- and alcohol-testing requirements, including a key requirement to use drug-testing laboratories certified by the U.S. Department of Health and Human Services. We observed that in most material respects, Mexico has a drug-testing program with protocols that are at least

equivalent to U.S. protocols, although some aspects of the specimen-collection procedures are not identical to those specified in U.S. regulation 49 CFR 40.

Safety Databases in Mexico for Drivers' Licenses, Truck Inspections, and Crashes. We verified that Mexico has databases with information on the safety records of drivers engaged in commercial motor vehicle operations, on vehicle and driver violations, and on truck crashes. Officials with Mexico's Department of Transportation, the Secretaría de Comunicaciones y Transportes (SCT), indicated that the database of drivers' licenses is well established and that coverage of licensed drivers and system reliability have improved over the past five years. Additionally, SCT has databases for commercial motor carrier inspections and crash data that are fairly recent and are undergoing improvements in terms of numbers of inspections and reportable accidents that are entered into the system. These databases cover inspections and incidents on Mexican federal roads and have three years of carrier- and driver-specific data on commercial motor vehicle operations. We did not audit these Mexican databases.

Matters for the Department's Consideration

On the basis of our review of the first 12 months of the Department's cross-border demonstration project, we present the following observations and trust that they will be useful as you consider the effectiveness of the project:

1. To accurately assess the safety performance of carriers in the demonstration project, FMCSA would need a larger sample of Mexican carriers than the 27 current participants. The agency could start with the 38 additional carriers that successfully passed the safety audits but because of lack of insurance were not granted OP-1 operating authority—if those carriers still have an interest in participating. If all these additional carriers secured the necessary insurance and were granted OP-1 authority, the total number of Mexico-domiciled carriers would be 65 and the total number of trucks would be about 300. The agency would have better statistical results with a larger sample size.

2. We observed that the mechanism for checking the 27 participant carriers and their 101 trucks is more stringent than what is in place for about 860 carriers and their 1,700 trucks that have "grandfathered" status or certificates of registration to operate in specific states beyond the commercial zone. We strongly urge FMCSA to extend similar inspection procedures and rigor to the other carriers that have long-haul operating authority and travel beyond the commercial zone. FMCSA informed the Panel that it intends to develop a more strategic enforcement focus for its inspection procedures in conjunction with the compliance review process established for Mexican carriers operating in the United States.

3. The existence of three operating authorities with varying safety requirements for Mexico-domiciled carriers offers an opportunity for the Department to bring Mexican carriers currently operating beyond the commercial zone in the United States under a single safety umbrella. A combined safety program for Mexican carriers with long-haul authority would enable FMCSA to better monitor and identify the unsafe carriers within these groups so that the carriers could improve their operations or FMCSA could put them out of service. Such a program would also streamline FMCSA's safety oversight process, allowing the agency to focus its resources on expanding the number of compliance reviews it conducts on Mexican carriers with poor safety records. The Panel recognizes that certain safety features of the current demonstration project, such as a pre-condition PASA, would not be applicable to the grandfathered and certificated Mexican carriers, although a vigorous program of compliance reviews could be a substitute. However, other features, such as a special suffix next to the USDOT number for easy identification of trucks when they operate beyond the border zone and the every-truck-every-time checks at the border, could be applicable to

these long-haul carriers. FMCSA has committed to take the necessary steps to ensure these carriers have a unique identifier added to their existing USDOT number.

4. With regard to the PASA, because FMCSA said it did not properly articulate its intent with respect to use of the 11 safety regulations, we urge the agency to correctly state in a Federal Register notice how it plans to incorporate these regulations into the PASA. Using these 11 safety regulations (or whatever critical elements emerge in the New Entrant Rule) as pass-fail eligibility criteria in the PASA would improve the agency's ability to identify unsafe Mexican carriers and ensure that deficient basic safety-management procedures are corrected before carriers are granted long-haul operating authority.

5. FMCSA equipped 73 of the 101 Mexican participant trucks with GPS tracking devices, and we believe that these devices are an important safety control. As the devices are mounted on all the remaining project trucks, FMCSA should require more accurate and specific vehicle location and destination data from the database behind the tracking system. These data would allow the agency to improve its monitoring of project trucks when they operate beyond the border zone.

6. FMCSA did not report any insurance-related problems to the Panel other than the one carrier that allowed its insurance to lapse. Our interviews of the five insurance companies insuring the 29 demonstration project carriers did not indicate any further problems. However, FMCSA needs a more effective monitoring system to stop carriers who operate without the required insurance and operating authority before they enter the United States.

7. Considering the Department's announcement to extend the demonstration project and the stated objective to increase the number of Mexico-domiciled carriers participating in the project, it is important for the Department to monitor the adequacy of its staffing, inspection equipment, and other resource needs for the demonstration project. The Department should determine whether it needs to augment its inspection capability, equipment, or other support resources to accommodate the expected increase in the number of project participant carriers.

Madam Secretary, we submit this report for your consideration.

The Independent Evaluation Panel

U.S.-Mexico Cross-Border Trucking Demonstration Project

October 31, 2008

I. INTRODUCTION

On February 23, 2007, U.S. Secretary of Transportation Mary E. Peters and Mexican Secretary of Communications and Transportation Luis Téllez announced a U.S.-Mexico Cross-Border Trucking Demonstration Project. Operations under this project began on September 7, 2007, when the first authorized Mexican carrier, Transportes Olympic, hauled goods into the interior of the United States beyond the border commercial zone. On September 14, 2007, the first U.S.-based carrier, Stagecoach Cartage and Distribution, hauled goods into Mexico.

This demonstration project (also deemed to be a pilot project by Public Law 110-28, Section 6901),[8] was designed to allow up to 100 Mexico-domiciled carriers to operate beyond the border commercial zone along the U.S.-Mexico border. Mexico's Department of Transportation, the Secretaría de Comunicaciones y Transportes (SCT), was also to grant reciprocal authority to up to 100 U.S. carriers. Under this project, the Federal Motor Carrier Safety Administration (FMCSA), an agency of the U.S. Department of Transportation (USDOT), granted provisional long-haul authority to Mexico-domiciled carriers. This authority, known as OP-1, is different from the existing category of permanent commercial border zone authority, known as OP-2.

Following the announcement of this project, FMCSA published three notices in the Federal Register[9] that provided details on the conditions and requirements necessary for this demonstration project to commence.

FMCSA stated in the May 1, 2007, Federal Register notice that "the purpose of the project is to demonstrate the effectiveness of the safety programs adopted by Mexico-domiciled motor carriers and the monitoring and enforcement systems developed by USDOT, which together ensure that Mexican motor carriers operating in the United States can maintain the same level of highway safety as U.S.-based motor carriers." They also noted that "the demonstration project gives participants no exemptions from U.S. safety requirements."

To ensure that the project was independently evaluated and assessed, the Secretary of Transportation appointed a three-member Independent Evaluation Panel made up of Mortimer L. Downey III, former Deputy Secretary of Transportation; James T. Kolbe, former member of Congress from Arizona; and Kenneth M. Mead, former

[8] The U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007.

[9] 72 Federal Register 23883 (1 May 2007), 72 Federal Register 31877 (8 June 2007), and 72 Federal Register 46263 (17 August 2007). FMCSA also issued a notice in 73 Federal Register 45796 (6 August 2008) announcing a two-year extension of the demonstration project.

Department of Transportation Inspector General. Secretary Peters asked the Panel to assess:

- the implementation of U.S. motor carrier safety policies and regulations for the 12-month demonstration project and
- the safety performance of Mexico-domiciled carriers operating beyond the border commercial zone in the United States.

We accepted this commitment with the understanding that the Panel would be completely independent in conducting the evaluation, would have total access to any information we sought, and would have complete freedom to report our findings. The Secretary fully honored this understanding, and we conducted this assessment independent of the Department.

As requested by the Secretary, this report presents the results of our independent evaluation of the 12-month demonstration project. It covers our assessment of the project, our analysis of the safety record of the pilot participants, and our overall observations about the project. Our evaluation covered only the U.S. side of the project, reviewing Mexican carriers operating on U.S. highways, *not* U.S. carriers operating in Mexico. We were not asked to review any security concerns regarding Mexican carriers operating in the United States, nor were we charged to review any environmental or customs and immigration concerns in our evaluation. It was our understanding that the Secretary would obtain necessary evaluations of these matters from the appropriate agencies.

Paperwork Reduction Act Issue. About June 15, 2008, the Department informed the Panel that under the terms of the Paperwork Reduction Act (PRA), the Panel needed the approval of the Office of Management and Budget (OMB) or a waiver from OMB in order to conduct any interviews of nonfederal officials (drug testers, insurers, state border police, and state officials responsible for safety enforcement and data collection). We understood that compliance with this prohibition was not a discretionary matter and that it would be illegal to conduct any external interviews under PRA without the OMB approval/waiver. We immediately stopped all fieldwork involving interviews with nonfederal officials that was covered by the PRA. It took about six weeks for the Department to get the necessary approval from OMB and for the Panel to resume the critical fieldwork. The consequences of this situation were severe. It delayed our ability to independently verify the safety data the states provided to the Department, insurance coverage of the participating carriers, quality of the border inspections, and drug- and alcohol-compliance procedures. We resumed our external fieldwork in August 2008 and proceeded with our evaluation of the project.

1. Objectives and Scope of Evaluation

In conducting our evaluation, we were guided by the specific requirements in Public Law 110-28, Section 6901; the FMCSA notice published in the June 8, 2007, Federal Register; and additional substantive discussions with the Department.

Section 6901 required the Secretary of Transportation to ensure the following:

- The demonstration project consists of a representative and adequate sample of Mexico-domiciled carriers likely to engage in cross-border operations beyond U.S. municipalities and commercial zones on the U.S.-Mexico border.
- The Department has established sufficient mechanisms to determine whether the demonstration project is adversely affecting motor carrier safety.
- Federal and state monitoring and enforcement activities are sufficient to ensure that participants in the demonstration project are complying with all applicable laws and regulations.

The FMCSA June 8, 2007, Federal Register notice stated that our evaluation would look at the following five key safety questions:

- Are the available crash data for Mexico-domiciled carriers participating in the project statistically different from comparable U.S.-domiciled carriers?
- Do Mexico-licensed commercial drivers pose a greater risk to the traveling public than U.S. commercial driver's license (CDL) holders in terms of demonstrated unsafe driving practices, such as speeding, improper lane changes, and misuse of alcohol and controlled substances?
- Are the trucks operated by Mexico-domiciled motor carriers maintained at levels similar to those of U.S.-domiciled carriers, or do they have higher out-of-service (OOS) rates?
- In the course of conducting the Pre-Authority Safety Audits (PASAs) of Mexico-domiciled motor carriers, did FMCSA detect violations of the 11 critical safety regulations in any greater proportion than found in new-entrant audits of U.S.-domiciled carriers?[10]
- What other safety problems are being encountered by enforcement personnel and others in the course of implementing the demonstration project?

[10] Currently, all new U.S. motor carriers (private and for hire) operating in interstate commerce are required to apply for registration as a "new entrant" to receive a USDOT number.

2. Chronology of the Demonstration Project

The chronology of key events surrounding the demonstration project was as follows:

Figure 1. Key Highlights of Demonstration Project

Date	Key demonstration project event
February 23, 2007	• The United States and Mexico announced plans to initiate a one-year demonstration project that would allow up to 100 Mexican and 100 U.S. motor carriers to have unlimited access to make truck deliveries from one country to the other. The project started in September 2007.
May 2007	• Secretary Mary E. Peters set up the Independent Evaluation Panel to assess the demonstration project.
May 25, 2007	• Congress set legislative requirements in Public Law 110-28, Section 6901, mandating specific requirements that must be met before initiation of such a demonstration project.
September 6, 2007	• USDOT Inspector General issued his report on USDOT's compliance with the legislative requirements. • USDOT provided a letter to Congress addressing issues raised by OIG.
September 7, 2007	• The demonstration project started with a Mexico-domiciled carrier entering the United States. • Seven days later, an American carrier entered Mexico to make deliveries for the first time.
December 2007	• A legislative action enacted as Consolidated Appropriations Act 2008, Public Law 110-161, stated: "None of the funds made available under this Act may be used to establish a cross-border motor carrier demonstration project to allow Mexico-domiciled motor carriers to operate beyond the commercial zones along the international border between the United States and Mexico." • The Department interpreted this provision as restricting funding to establish future demonstration projects. • Some members of Congress disagreed with this interpretation and stated the intention of the provision was to stop the current demonstration project.
February 12, 2008	• Oral arguments on the legality of the Department's interpretation of Public Law 110-161 and other matters were made to the Ninth Circuit Court of Appeals in San Francisco. A decision is pending.
March 10, 2008	• The USDOT Inspector General submitted his interim report on the first six months of the demonstration project.
August 4, 2008	• USDOT announced a two-year extension of the demonstration project.
September 7, 2008	• 12-month mark of demonstration project initiated September 7, 2007.
October 31, 2008	• Independent Evaluation Panel submits its report to the Secretary of Transportation.

As indicated earlier, our review covers only the first 12 months of the demonstration project. On August 4, 2008, the Department of Transportation announced that it had extended the demonstration project by two years.[11] We focused on the implementation of the project within the scope of our mandate.

3. Summary of Evaluation Methodology and Activity

We conducted our assessment to achieve the required goals and performed activities that we determined were critical to allow us to gather and analyze all relevant information given the available time and resources.

The following is a summary of our evaluation activities:

- discussions with FMCSA officials and requests for data from FMCSA;
- observation of and participation in Pre-Authority Safety Audits (PASAs);
- interviews with FMCSA field staff;
- observation of operations and inspections at specific border crossings;
- observation of drug- and alcohol-compliance protocols in Mexico and the United States;
- discussions with safety and traffic enforcement officials in the four border states (California, Arizona, New Mexico, and Texas) and telephone interviews with officials from 44 nonborder states and the District of Columbia;[12]
- review and analysis of selected FMCSA data and documentation;
- review and analysis of FMCSA data specifically collected on Mexico-domiciled carriers and their trucks participating in the demonstration project; and
- coordination with the USDOT Inspector General and his review process, because Public Law 110-28, Section 6901, required the Office of Inspector General (OIG) to review the demonstration project and report to Congress and the Secretary of Transportation.

Appendixes A, B, and C provide further details about our methodology.

[11] This announcement was published in 73 Federal Register 45796 (6 August 2008).
[12] We excluded Alaska and Hawaii from the list of states to contact.

4. Summary of Key Objectives and Major Findings

Key Objective	Major Findings
As noted in Public Law 110-28, Section 6901	
▪ The demonstration project consists of a representative and adequate sample of Mexico-domiciled carriers likely to engage in cross-border operations beyond U.S. municipalities and commercial zones on the U.S.-Mexico border.	▪ The level of participation fell far short of what the Department had projected. Only 29 Mexico-domiciled carriers were granted OP-1 authority, 27 remained in the project, and 25 participated. The 27 remaining carriers were similar in certain organizational characteristics when compared with the larger group of nearly 700 Mexican carriers that initially expressed interest in the project and applied for long-haul operating authority. ▪ However, because the 27 carriers represent about 4 percent of the carriers that applied, the sample size was too small for making statistical projections from the participant Mexican carriers to the carriers who applied for the project and are likely to seek such long-haul operating authority in the future.
▪ The Department has established sufficient mechanisms to determine whether the demonstration project is adversely affecting motor carrier safety.	▪ FMCSA implemented policies and regulations regarding admitting Mexico-domiciled carriers into the demonstration project, establishing safety mechanisms at the border, ensuring enforcement of safety rules by state enforcement officials, and carrying out the Department's commitment to check every truck every time.
▪ Federal and state monitoring and enforcement activities are sufficient to ensure that participants in the demonstration project are complying with all applicable laws and regulations.	▪ FMCSA had adequate site-specific plans for the commercial truck crossings and for conducting the truck checks and inspections in a manner consistent with the Department's commitments. FMCSA took steps to ensure project participant carriers' compliance with its motor carrier safety rules, including ensuring that state enforcement officials were prepared to monitor the participant carriers and understood how to implement the demonstration project's policy guidance.
▪ **As noted in Federal Register (June 8, 2007)**	
▪ Are the available crash data for Mexico-domiciled carriers participating in the project statistically different from comparable U.S.-domiciled carriers?	▪ FMCSA and state safety enforcement officials reported no crashes involving Mexico-domiciled trucks participating in the demonstration project. Because of the low level of participation, it was not possible to statistically compare this crash data with crash data from a comparable group of U.S.-domiciled carriers. However, we statistically compared the out-of-service rates and report our findings below.

(Continued on the following page.)

Summary of Key Objectives and Major Findings (*continued*)

Key Objective	Major Findings
▪ Do Mexico-licensed commercial drivers pose a greater risk to the traveling public than U.S. commercial driver's license (CDL) holders in terms of demonstrated unsafe driving practices, such as speeding, improper lane changes, and misuse of alcohol and controlled substances?	▪ To accurately assess the safety risk posed by project participant drivers, FMCSA would need a larger sample of Mexican carriers than the 27 current participants. ▪ However, agency data show that of the 12,000 truck trips made by the project carriers, there were six cases where a project driver was convicted for a driving offense. One of the convictions was for speeding 6 to 10 miles beyond the speed limit, four were for general equipment failure, and another was for improper lane change.
▪ Are the trucks operated by Mexico-domiciled motor carriers maintained at levels similar to those of U.S.-domiciled carriers, or do they have higher out-of-service rates?	▪ We statistically compared the vehicle and driver out-of-service (OOS) rates of the project participants with the rates of all U.S.-domiciled carriers and new-entrant U.S.-domiciled carriers. The OOS rates for the project participants were lower than those of the U.S. carriers. ▪ We also found that the OOS rates for the project carriers were lower than those of the grandfathered and certificated Mexican carriers with long-haul authority and the Mexican carriers with commercial zone authority.
▪ In the course of conducting the Pre-Authority Safety Audits (PASAs) of Mexico-domiciled motor carriers, did FMCSA detect violations of the 11 critical safety regulations in any greater proportion than found in new-entrant audits of U.S.-domiciled carriers?	▪ The PASA conducted on Mexican carriers in the project before they were granted operating authority was more stringent than the safety audit conducted on new-entrant U.S. carriers within the first 18 months of their operations. The two safety audits are not identical. ▪ Between, September 7, 2007 and September 6, 2008, there were more than 71,000 new entrant U.S. carriers. FMCSA data indicate that the agency did find fewer violations of the 11 critical safety regulations among the Mexican carriers that passed the PASA than among the U.S. carriers that passed the new-entrant audits.
▪ What other safety problems are being encountered by enforcement personnel and others in the course of implementing the demonstration project?	▪ Currently, there are three concurrent operating authorities for Mexican carriers to operate in the United States. This presents an opportunity to bring the carriers that can legally go beyond the border zone under uniform safety procedures. ▪ FMCSA needs to improve its enforcement mechanism to stop carriers operating without the required insurance before they enter the United States.

SOURCE: Independent Evaluation Panel, October 2008.

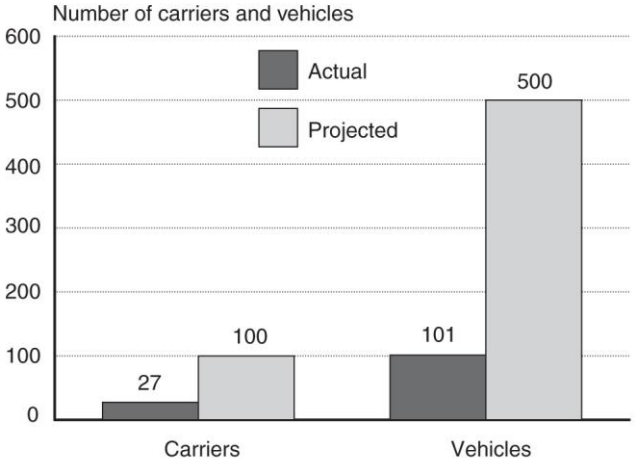
II. FINDINGS

1. The Level of Participation Fell Far Short of What the Department Had Projected, and Most of the Demonstration Trucks Stayed Within the Border Zone.

Far Fewer Mexico-Domiciled Carriers and Trucks Participated in the Demonstration Project than FMCSA Projected.

Fewer Mexican carriers and vehicles participated in the demonstration project than was expected. In addition, the scope of the participants' cross-border operations was limited. Less than one-third of the participating carriers made trips beyond the border zone, and a large majority of the trips were within the border zone. The limited participation adversely impacted the data necessary for the Panel's evaluation. It reduced the exposure of Mexican trucks on U.S. roads, which affected our evaluation of the effectiveness of the systems FMCSA put in place to monitor enforcement in the states. More specifically, it affected our ability to statistically compare the safety performance of the participant carriers to that of the Mexico-domiciled carriers that applied for the demonstration project.

Figure 2: Actual Versus Projected Participation in Demonstration Project: September 2008



SOURCE: Independent Evaluation Panel, based on data from FMCSA, September 2008.

When the Department of Transportation announced the demonstration project in February 2007, FMCSA expected that it would grant provisional authority for up to 100 Mexico-domiciled motor carriers and 500 trucks to engage in long-haul freight transportation beyond the U.S. border zone. The Department planned to grant this authority at a rate of 25 motor carriers per month for four months. At the end of the 12-month period, only 29

carriers had been granted OP-1 long-haul authority. Of those, only 27 participated because 2 carriers dropped out of the project in the fifth and ninth months (Figure 2).[13]

FMCSA records indicate that 2 of the remaining 27 carriers never crossed into the United States. As a result, only 25 Mexico-domiciled carriers participated in the project. These carriers accounted for less than 4 percent of the carriers that had applied for long-haul operating authority (Box 1).

Of the 25 active carriers, only 4 were in the demonstration project for the entire 12 months (Figure 3). At the one-year point, more than one-third (10 carriers) had been in the project for only four months. These carriers received their OP-1 authority between April 2008 and July 2008.

This low level of participation was not completely unexpected by the Department. In its Federal Register notice of August 17, 2007, FMCSA noted that "the Agency acknowledges that the number of participating carriers may fall below the goal of 100. However, the Agency believes there is sufficient interest in the project to ensure an appropriate number of participants."[14] As Figure 2 shows, the expected level of interest did not materialize, and Mexican carriers did not join the project in the numbers that USDOT had expected.

In addition to the shortfall in carriers, far fewer trucks were granted long-haul authority to participate in the demonstration project when compared with the more than 500 trucks the Department projected. The 27 participant carriers have a combined total of only 101 trucks participating in the project—that is, about one-fifth of what the Department had envisioned. The total number of trucks is 118 if the vehicles of the two carriers that dropped out are

Box 1. How the Panel Derived the Universe of Applicant Carriers

The Panel obtained from FMCSA a list of Mexican carriers that over the years had applied for long-haul operating authority and were eligible for the demonstration project. The list had a total of 778 carriers. The agency informed us that it considered some of these carriers ineligible for the project on the basis of a number of factors, including submitting an incomplete application, failing to obtain clearance after vetting by the Department, carrying hazardous materials, and carrying passengers.

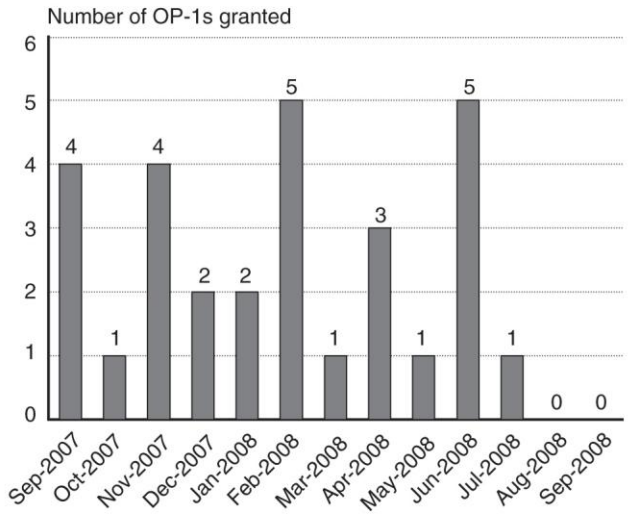
The Panel felt that of the 778 carriers, those that carry hazardous materials or passengers could be excluded from the project, as required by Public Law 110-28, Section 6901. The remaining carriers, however, could be eligible to reapply for long-haul operating authority.

Starting with the 778 carriers, we subtracted 21 hazardous materials carriers and 12 passenger carriers. We also subtracted 58 carriers that did not have USDOT numbers and therefore did not have any safety performance records that we could use in our safety analysis. After subtracting these carriers, we had a list of 687 carriers that we used as the statistical universe of carriers in our analysis of representativeness, adequacy of sample, and safety performance. Twenty-nine of these carriers were granted long-haul operating authority, 27 remained in the project, and 25 were active during the 12 months.

[13] Trinity Industries de Mexico S de R L de CV, USDOT no. 610385, dropped out February 1, 2008, from the demonstration project and its commercial zone authority was reinstated. Orlando Nevid Lopez Hernandez dba Productos Alpes, USDOT no. 559947, dropped out June 19, 2008.
[14] 72 Federal Register 46271 (17 August 2007).

included as authorized trucks. Figure 4 presents information on the level of carrier participation that forms the sample size from which any data collection, analysis, and conclusions can be drawn.

Figure 3: Number of Carriers Granted OP-1 Authority by FMCSA During the 12-Month Demonstration Project: September 2007 to September 2008



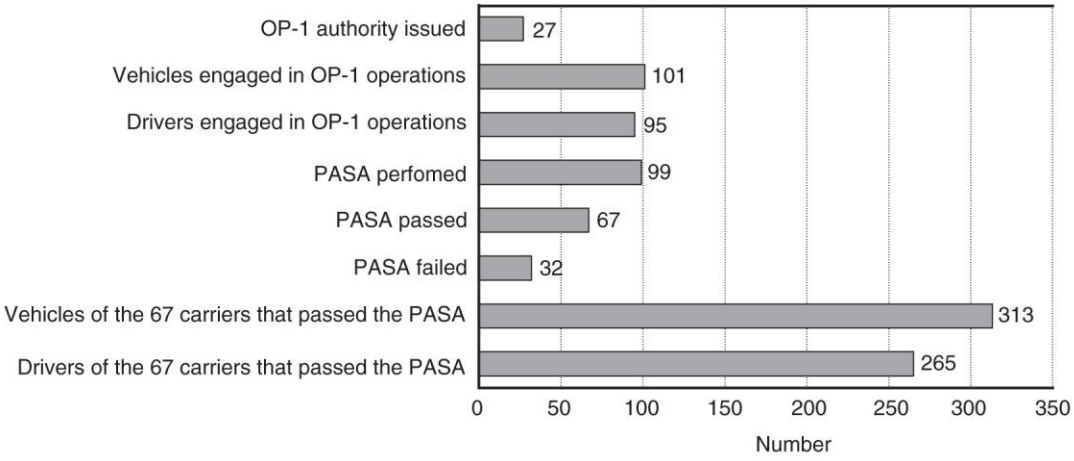
SOURCE: Independent Evaluation Panel, based on data from Federal Motor Carrier Safety Administration for carriers granted OP-1 authority as of August 2008.

Our analysis of FMCSA records provided to the Panel for the carriers that applied for the project and those that the agency prequalified for long-haul authority underscores the issues the agency faced in reaching its original target of 100 carriers and 500 trucks from the current applicant pool.

- First, the records show that by the end of August 2008, the agency had prequalified only 67 carriers for the project. Thus far, 29 of these carriers have received OP-1 authority, 27 of these are currently eligible to participate, and 25 are active participants.
- Second, although the agency has prequalified 38 other carriers in addition to the 29 that have received OP-1 authority, these carriers have not yet filed the required proof of insurance. If all these additional carriers were to secure the necessary insurance and were granted OP-1 authority, the total number of Mexico-domiciled carriers would reach 67 and the total number of trucks would reach about 313—still only two-thirds the number of vehicles projected at the start of the project.
- Third, far fewer trucks are involved in the project in part because all the participating Mexico-domiciled carriers have relatively small fleets. These carriers average about 4 vehicles each. Only 3 of the 27 carriers have 10 or more trucks. Nine of these firms have only 1 truck participating in the project. The projected goal for the number of vehicles could have been reached if larger Mexican carriers had applied and qualified for the project as FMCSA had apparently expected.[15]

[15] FMCSA stated in its notice in 72 Federal Register 23885 (1 May 2007) that of the applicant carriers, "some 70 percent of the carrier applicants operate small vehicle fleets, while 25 percent have medium-sized and 5 percent have large fleets. For this demonstration program, a small vehicle fleet is 20 trucks or less, while a medium-sized fleet consists of 21 to 100 trucks. A large fleet is anything in excess of 100 trucks."

Figure 4: Mexico-Domiciled Carriers in Cross-Border Trucking Demonstration Project: September 2008



PASA = Pre-Authority Safety Audit.

SOURCE: Independent Evaluation Panel, based on data from Federal Motor Carrier Safety Administration for carriers granted OP-1 authority as of August 2008.

Uncertainty and Insurance Cited as Major Reasons for Limited Participation.

We asked FMCSA officials and Mexican officials from SCT for the reasons they have received from Mexican carriers for the limited participation. Officials from both agencies reported to the Panel that carriers cited as their major reason the uncertainty regarding whether the operating authority granted under the project would continue. The officials also cited the additional costs of insurance needed to engage in long-haul operations beyond the border commercial zone.

SCT officials also cited a third reason for the limited participation. They told the Panel that several Mexican carriers decided not to join the project because of the FMCSA requirement that an applicant carrier can operate in the United States under a single operating authority. The rules will not allow the carrier to designate a portion of the trucks it intends to use in the United States for the long-haul OP-1 operating authority, which involves greater safety requirements, while using their remaining U.S.-bound trucks within the border commercial zone under OP-2 authority. In other words, a Mexican carrier cannot operate with dual operating authority within the United States. Each applicant carrier for the demonstration project was required to subject all the trucks it intended to use in the United States to the stringent project requirements. For example, if a Mexican carrier planned to use 10 trucks in the United States, the carrier could not participate in the project if it wanted to use its 5 newest trucks for long-haul operations and use its 5 oldest trucks for drayage within the border zone. According to the SCT

officials, most of the Mexican carriers currently operating within the border zone cited this reason for not applying to participate in the demonstration project.

Most Demonstration Project Truck Trips Remained Within the Border Commercial Zone.

According to FMCSA data from the Commercial Vehicle Safety Alliance (CVSA) decal check of every truck every time, the overwhelming majority (more than 85 percent) of the total demonstration project truck trips for all the carriers, including the two that dropped out, were within the border commercial zone. While relatively fewer truck trips went beyond the border zone, the exact number of these trips is uncertain. Approximately 1,400 to 1,900 truck trips—that is, about 11 percent to 15 percent of the total trips—went beyond the border zone (Table 1). We note that the proportion of trips beyond the zone could be lower than this percentage range because of incorrect trip destination information.

Table 1 presents FMCSA's summary and the Panel's summary of the recorded destination information. The reason for the difference between the two sets of numbers is that the Panel, using the recorded destination information, correctly redesignated some trips in Texas and California as going beyond the border zone. Although FMCSA inspectors at the border asked Mexican drivers where their trucks were headed, the agency reported that in certain cases the original destination information recorded by the border inspectors was incorrect. The agency corrected the trip destination information for at least one carrier, Trinity Industries, after checking with the carrier. In addition, we found that the agency designated some trips as staying within the commercial zone when the reported destinations were out of the zone. For example, there were cases where truck trips to Fort Worth, Texas, were designated in the dataset as not going beyond the zone. Fort Worth is more than 400 miles from the border. While some of these trips may have stayed in the commercial zone, because the trailer may have been transferred to a U.S. truck, the exact number of such trips is uncertain.

Nevertheless, the 1,400 truck trips out of the more than 12,000 trips represents an average of 6 demonstration trucks per weekday traveling outside the commercial zone during the 12-month demonstration project. By contrast, on each weekday, according Customs and Border Protection data, there were nearly 20,000 Mexican truck crossings into the United States by commercial zone carriers and the certificated carriers that are allowed to go beyond the zone.[16]

[16] The estimate of 20,000 truck crossings each weekday is based on Customs and Border Protection data on border crossings into the United States from Mexico. In 2007, there were 4.8 million truck crossings from Mexico. See Table H-4 in Appendix H for additional data by border-crossing facility.

Table 1. FMCSA's Records of Demonstration Project Truck Crossings by Destination State: September 7, 2007, to September 6, 2008

Destination state	Total entries	Within zone	Beyond zone	Percent beyond zone
Texas				
FMCSA summary	8,980	8,376	604	6.7%
Panel summary	8,980	7,998	982	10.9%
California				
FMCSA summary	3,392	2,638	754	22.2%
Panel summary	3,392	2,569	823	24.3%
Arizona				
FMCSA summary	52	44	8	15.4%
Panel summary	52	48	4	7.7%
New Mexico				
FMCSA summary	8	6	2	75.0%
Panel summary	8	0	8	100.0%
Remaining states				
FMCSA summary	80	44	36	45.0%
Panel summary	80	0	80	100.0%
FMCSA subtotal	12,512	11,108	1,404	11.2%
Panel subtotal	12,512	10,615	1,897	15.2%

SOURCE: Independent Evaluation Panel, based on data from FMCSA demonstration data, as of September 23, 2008.

Table 2 presents FMCSA's decal check data on the distribution of the demonstration truck trips by carrier. It shows that the proportion of trips beyond the commercial zone varies by carrier. The FMCSA data show that the carrier GCC alone accounted for more than half (54 percent, or 6,057) of the total truck trips. And more importantly, all GCC's trips were to destinations within the commercial zone. The company with the second most trips, Avomex International, accounted for about 10 percent (or 1,156) of the total truck trips. About 34 percent (or 392) of Avomex's truck trips were beyond the border zone.

Of the 1,400 OP-1 truck trips beyond the border that were made by the 25 active participants, Avomex was the leading carrier with 392 trips, followed by Servicios Refrigerados Internacionales with 333 trips, and Transportes Padilla with 203 trips.

To review the trip destination information in the FMCSA spreadsheets, we obtained from FMCSA the copies of the original forms completed by the border inspectors when they performed checks between September 7, 2007, and March 30, 2008. We examined the dataset for completeness and consistency during this period. For the majority of the carriers, the FMCSA records were consistent with the September 2007 to March 2008 data we reviewed. The only exception was Trinity Industries, one of the two

companies that left the demonstration project. The initial records in the dataset showed that the carrier had made trips outside the commercial zone to about seven states. Updated versions of the dataset showed all of Trinity's trips were within the commercial zone. FMCSA explained that the correction resulted from a discrepancy between where the driver said the trailer (with the goods) was destined, based on the customs manifest, and where the trailer transfer occurred in the commercial zone. In April 2008, we made initial contact with the company by telephone and e-mail at its Mexico office to independently verify the destination of the trips it made when it was participating in the project. However, company officials did not respond to our request for information.

Because in June 2008 FMCSA switched from using a paper form for gathering the data at the border to using a computer program installed on the border personnel's laptops, we did not go back to request the original border reports for the last five months of the project. However, the agency continued to provide us the summary records in the dataset.

Table 2. Truck Entries into the United States by Demonstration Project Carriers: September 7, 2007, to September 6, 2008

Order carrier joined project	USDOT #	OP-1 carriers	Total entries	Within zone	Beyond zone	Percent beyond zone
1	555188X	Transportes Olympic	57	20	37	64.9%
2	557972X	Transportes Padilla	716	513	203	28.4%
3	650383X	Transportes Rafa de Baja California	103	75	28	27.2%
4	1052546X	Servicios Refrigerados Internacionales	393	60	333	84.7%
5	710491X	Higienicos y Desechables del Bajio	6	3	3	50.0%
6	650155X	GCC Transporte SA de CV	6,057	6,057	-	-
8	975522X	Fidepal S de RL de IP y CV	9	1	8	88.9%
9	951134X	Roberto Montemayor Cruz	97	24	73	75.3%
10	1658656X	Transportes Selg SA de CV	12	6	6	50.0%
11	559560X	Ricardo Cesar Martinez Montemayor	306	245	61	19.9%
12	563815X	Jose David Ruvalcaba Adame	54	30	24	44.4%
13	1055053X	Maria Del Carmen Lopez Armenta	15	3	12	80.0%
14	558189X	Francisca Burgos Vizcarra	800	728	72	9.0%
15	786826X	Noe Basilio Montiel dba M&N de Mexico	50	19	31	62.0%
16	677516X	Alvarez Perez dba Distribuidora Marina	13	9	4	30.8%
17	1059694X	Transportes Monteblanco SA de CV	67	22	45	67.2%
18	1142107X	Avomex International SA de CV	1,156	764	392	33.9%
20	1693389X	Oscar Arturo Grageda Duarte	43	25	18	41.9%
21	557042X	Luis Eusebio Salgado Esquer	958	945	13	1.4%
22	556741X	David Klassen Peters	11	3	8	66.7%
23	861744X	Grupo Behr de baja California SA de CV	276	274	2	0.7%
24	1548345X	Maria Isabel Mendivil Velarde	2	2	-	-
25	1296357X	Distribuidora Azteca del Norte SA de CV	2	-	2	100.0%
26	1677817X	Translogistica SA de CV	-	-	-	-
27	711276X	Transportadora Terrestre SA de CV	1	1	-	-
28	654499X	Manuel Encinas Teran	31	4	27	87.1%
29	974841X	Maquinaria Agrícola de Noreste SA de CV	-	-	-	-
		SUBTOTAL	**11,235**	**9,833**	**1,402**	**12.5%**

NOTE: This table presents data for the 27 carriers that were granted OP-1 operating authority. The table excludes the two carriers that dropped out: Trinity Industries, the 7th carrier to be granted OP-1 authority, and Orlando Nevid Lopez Hernandez, the 19th carrier to be granted OP-1 authority.

SOURCE: Independent Evaluation Panel, based on data from FMCSA as of September 15, 2008.

2. Demonstration Trucks Had No Reported Crashes and Low Out-of-Service Rates.

A. Crashes

FMCSA and State Safety Enforcement Officials Reported Zero Crashes Involving Participating Trucks During the 12-Month Project.

We asked FMCSA for information on all crashes involving all Mexican trucks operating in the United States, including the demonstration project vehicles, during the demonstration project. FMCSA provided the Panel with crash information on federally reportable accidents it obtains from the states through its Motor Carrier Safety Assistance Program (MCSAP) and stores in the Motor Carrier Management Information System (MCMIS) database.[17] The agency provided six separate data submissions covering the period from September 7, 2007, to September 6, 2008. The MCMIS data cover federally reportable motor carrier crashes.[18] These are commercial vehicle crashes that result in fatalities, injuries that require transportation for immediate medical attention, or towed vehicles. They do not include, for example, crashes that could be characterized as "fender benders" or nonfatal crashes resulting in property damage. We found no evidence of reportable or nonreportable crashes involving demonstration participant trucks during our interviews of MCSAP state officials or through informal scans of published news reports via the Internet.

Our evaluation of FMCSA's MCMIS crash database determined that between September 7, 2007, and September 6, 2008, the 101 trucks belonging to the 27 demonstration project carriers were not involved in any crashes during their trips within and beyond the commercial zone. There were zero fatalities and zero injuries (Table 3). No state reported any reportable crashes by these 101 trucks to FMCSA for this period.

By contrast, there were 74 crashes involving the other Mexican carriers that operate in the United States but were not part of the demonstration project (Table 3). About 80 percent, or 59 crashes, involved Mexican carriers with permanent authority to operate only within the border commercial zones. The other 20 percent, or 15 crashes, involved grandfathered and certificated Mexican carriers with pre-NAFTA certificates of registration to operate beyond the commercial zone. These 74 total crashes by trucks not in the demonstration project resulted in 10 fatalities and 50 injuries during the 11 months.

[17] FMCSA works through its Motor Carrier Safety Assistance Program to enforce federal truck regulations. The agency provides financial assistance for enforcement activities.

[18] For MCMIS, FMCSA defines federally reportable crashes by vehicle type and severity of crash. The vehicle must be either a truck used for transporting property, a vehicle used for moving hazardous materials, or a bus with seating capacity of at least 15, including the driver. For crash severity, there must be either a fatality, injury requiring transportation for immediate medical attention, or towed vehicle due to the crash.

The commercial zone, grandfathered, and certificated Mexican carriers make nearly 5 million truck crossings into the United States each year.

Table 3. Comparison of Crash, Fatality, Injury, and Towaway Information for Mexican Carriers Operating in the United States: September 7, 2007, to September 6, 2008

Carrier Groups by Operating Authority	Crashes	Fatalities	Injuries	Towaways	Reporting states
Total	**74**	**10**	**50**	**69**	
Demonstration project: OP-1 (27 carriers and 101 trucks)	0	0	0	0	None
Border commercial zone: OP-2 (more than 7,000 carriers and 28,533 trucks)	59	10	45	54	AZ (4), FL (2), IN (1), TX (52)
"Grandfathered" and "Certificated" (more than 860 carriers and 1,749 trucks)	15	0	5	15	CA (14), AR (1)

SOURCE: Independent Evaluation Panel, based on FMCSA data, as of September 30, 2008.

Our further review of these crashes determined that of the 59 crashes by OP-2 commercial zone carriers, 52 were in Texas, 2 were in Florida, and 1 was in Indiana. The FMCSA data reported no crashes in California by commercial zone carriers. We were concerned that the MCMIS data showed no crashes by OP-2 carriers in California during this period. The OIG expressed a similar concern.

Of the 15 crashes by the grandfathered and certificated carriers, 1 was in Arkansas and involved a carrier that has a certificate of registration to operate only within Texas. In the four crashes in Florida, Indiana, and Arkansas that involved Mexican trucks not operating as part of the demonstration project, the vehicles were clearly outside the bounds of their operating authority.

In using the MCMIS crash database to assess the safety performance of the participant carriers, we were mindful of the systemic underreporting that plagues this important database. This underreporting problem has been well documented by University of Michigan researchers working on a project for FMCSA.[19] Nationally, not all reportable crashes are reported into MCMIS as required. The proportion of truck crash records that are reported varies by state.

[19] FMCSA has a project for evaluating state-specific MCMIS crash files, identifying problems with the data, and proposing solutions. Information on this project is available at www.umtri.umich.edu/about.php.

To further investigate crash information on the participant carriers, we interviewed MCSAP officials in the four southern border states. Each of the four states—California, Arizona, New Mexico, and Texas—reported to the Panel that they have no record of reportable crashes during the past 12 months involving demonstration project trucks. Officials from all four states indicated that they were also not aware of a nonreportable crash involving these demonstration trucks. California and Texas, where in fact most of the OP-1 operations have taken place, were able to share summary data from their state police accident reporting databases with the Panel to confirm that there were no known crashes in their states. Unfortunately, because of time and resource constraints, the Panel was not able to independently compare data from each of the four states' police accident reporting databases with those in the MCMIS database to assess the level of completeness and accuracy.

California safety enforcement officials did provide the Panel with data for the period between September 7, 2007, and September 6, 2008, showing that there were 69 federally reportable truck crashes in California that involved a driver operating with a Mexican CDL. Using the USDOT number for the trucks involved in these crashes, we independently verified that none involved a demonstration project truck. We determined from FMCSA's list of certificated carriers that 10 of these crashes involved Mexican certificated carriers. Using FMCSA's Licensing and Insurance (L&I) database, we determined that another 16 crashes involved carriers that are Mexican owned but U.S. domiciled.

Our review indicates that of the remaining 43 truck crashes in California involving a driver with a Mexican CDL, the carriers were not Mexican owned or Mexican domiciled. These drivers could be driving for U.S.-based carriers with joint ownership by U.S. and Mexican companies. In our discussions of these findings with FMCSA, the agency noted that some 391 U.S.-domiciled carriers have joint U.S.-Mexico ownership, with the U.S. company having the majority ownership. FMCSA categorizes these companies as "enterprise carriers." Because these enterprise carriers are U.S. domiciled, they have the same operating authority as a U.S. motor carrier, except they are only allowed to transport international cargo.

B. Inspections, Out-of-Service Rates, and Violations

Between September 7, 2007, and September 6, 2008, FMCSA and state officials conducted more than 1,400 safety inspections of demonstration project trucks and more than 7,000 safety inspections of the drivers operating in the United States from Mexico.[20] These safety inspections were in addition to the "every-truck-every-time" checks. Of these 1,400 vehicle safety inspections, 9 percent, or 130, resulted in trucks being placed out of service (OOS) for serious safety violations, such as vehicle brakes out of adjustment, an inoperable required lamp, or an audible air leak in a tire (Table 4). By comparison, the vehicle OOS rate for the project participants (9 percent) was less than half the rates for the grandfathered carriers (24 percent), commercial zone carriers (22 percent), all U.S.-domiciled carriers (23 percent), and new-entrant U.S. motor carriers (28 percent).

Of the 7,000 driver safety inspections, 37, or less than one percent, resulted in the driver being placed out of service. The driver OOS rate (0.5 percent) for the demonstration project carriers was lower than the rate for the grandfathered carriers but similar to that for the commercial zone carriers. It was also lower than the rates for all U.S.-domiciled carriers and new-entrant U.S.-domiciled carriers.

Table 4. Out-of-Service Rates for Demonstration Project Carriers, Other Mexican Carriers, and U.S.-Domiciled Carriers: September 7, 2007, to September 6, 2008

Carrier categories	Number of carriers	Driver OOS rate	Vehicle OOS rate
Demonstration project carriers	27	0.5%	8.7%
Grandfathered and certificated carriers	861	3.2%	23.8%
Border commercial zone carriers (2007)	7,000	1.0%	21.7%
All U.S.-domiciled carriers (2007)	690,000	7.2%	22.6%
U.S.-domiciled new-entrant carriers	71,000	13.3%	28.0%

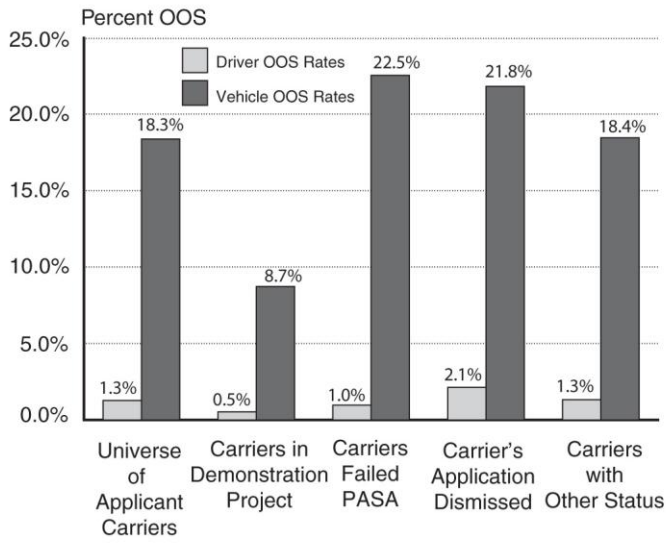
SOURCE: Independent Evaluation Panel, based on MCMIS data that FMCSA provided to the Panel (project participant carriers, grandfathered carriers, and U.S.-domiciled new entrant carriers) and MCMIS data posted on FMCSA's website (border commercial zone carriers and U.S.-domiciled carriers).

As a comparison, we checked the OOS rates for the demonstration project carriers with those of other related groups of carriers. These groups included the 687 universe of carriers for the project (Box 1), the 32 carriers that failed the PASA, and the 291 carriers whose applications were dismissed. Since many of these carriers are continuing to operate within the border zone, data is available on their OOS records.

[20] These are the North American Standard Inspections, not the "every truck every time" check of the CVSA decal and drivers' licenses.

During this same period, the vehicle OOS rate was 18 percent for the 687 applicant carriers, 23 percent for the 32 carriers that failed the PASA, and 22 percent for the 291 carriers whose applications were dismissed. The driver OOS rate was 1.3 percent for the applicant carriers, 1.0 percent for the carriers that failed the PASA, and 2.1 for the carriers whose applications were dismissed (Figure 5).

Figure 5: Driver and Vehicle Out-of-Service Rates for the 687 Demonstration Project Applicants by Carrier Category: September 7, 2007, to September 6, 2008



NOTE: The carriers with "Other Status" include applicants that FMCSA did not consider for the demonstration project because of various reasons such as incomplete applications or failure to receive vetting by the Department of Homeland Security.

SOURCE: Independent Evaluation Panel, based on FMCSA MCMIS data for applicant carriers from September 7, 2007, to September 6, 2008.

We found that the vehicle OOS rate for the OP-1 participant carriers was lower than that of the larger pool of applicant trucks, in part because a lower percentage of the inspections for the OP-1 trucks were the more stringent Level 1 inspections. Because the OP-1 trucks are inspected during the PASA and subsequently have to display a valid CVSA decal, they are subjected to a Level 1 roadside inspection only when the CVSA decal is expired or an inspector notices an obvious physical defect on the vehicle.

However, our statistical analysis of the inspection data from the 27 participant carriers and the 687 applicant carriers indicates that while the OOS rates for the project participants are lower than those of the project applicants, additional data would be needed from more project participant carriers to allow statistically significant comparison of these two groups. We cannot extrapolate from the participant carriers' OOS rates to other carriers among the applicant carriers. For example, we cannot say that because the participant carriers had lower OOS rates, other carriers from the applicant pool would likely have lower OOS rates if they were to join the demonstration project.

We also reviewed the OOS rates for the individual companies participating in the project. Table H-3 in Appendix H provides the summary data of the participant carriers' total inspections, OOS inspections, and the OOS rates. The FMCSA data show that the vehicle OOS rates for the top three carriers with the most OP-1 trips beyond the border

zone were as follows: Avomex International (5.9 percent), Servicios Refrigerados Internacionales (4.9 percent), and Transportes Padilla (19.7 percent). GCC, the carrier with the most overall truck trips during the demonstration project but no reported trips beyond the commercial zone, had a vehicle OOS rate of 8.5 percent during the project. See Table H-3 for the complete list of OOS rates by carrier.

In addition to the comparison of the OOS rates for the Mexican carriers that participated in the project and the carriers that applied, the Panel also analyzed FMCSA's roadside inspections and OOS data on all U.S., Mexican, and Canadian trucks operating in the United States, published on the agency's Analysis and Information (A&I) website.[21] Table 5 presents the summary data by the trucks' countries of domicile. Our review shows that in 2007, the vehicle OOS rates for trucks operating in the United States were 21.8 percent for Mexican trucks, 22.6 percent for U.S. trucks, and 12.9 percent for Canadian trucks. The driver OOS rates were 1.0 percent for Mexican drivers, 7.2 percent for U.S. drivers, and 6.3 percent for Canadian drivers.

We performed a statistical test to determine if the OOS rates from the project carriers and the U.S. carriers are statistically different from each other. Based on the available data, we determined that the vehicle and driver OOS rates for the demonstration project carriers are smaller than the 2007 vehicle and driver OOS rates for all U.S.-domiciled carriers.

[21] http://ai.fmcsa.dot.gov/international/border.asp.

Table 5. Roadside Inspections for All Trucks Operating in the United States by Country of Domicile: 2004 to 2008

Categories	All Trucks By Country of Domicile				
	All U.S. Domiciled Vehicles				
	2004	2005	2006	2007	2008
Inspections	2,785,849	2,768,000	3,042,288	3,106,852	1,437,884
Driver Inspections	2,729,810	2,707,174	2,901,232	2,958,320	1,383,810
Driver OOS Rate*	6.9%	6.9%	7.4%	7.2%	6.9%
Vehicle Inspections	2,066,918	1,995,239	2,175,895	2,144,493	984,938
Vehicle OOS Rate**	23.9%	23.7%	23.3%	22.6%	22.7%
	All Mexican Domiciled Vehicles Operating in U.S.				
	2004	2005	2006	2007	2008
Inspections	136,937	165,694	191,010	201,334	90,691
Driver Inspections	136,640	165,559	190,559	201,204	90,686
Driver OOS Rate*	1.7%	1.2%	1.3%	1.0%	1.3%
Vehicle Inspections	126,519	152,430	177,765	182,360	81,414
Vehicle OOS Rate**	22.7%	22.6%	21.1%	21.8%	20.9%
	All Canadian Domiciled Vehicles Operating in U.S.				
	2004	2005	2006	2007	2008
Inspections	96,314	93,577	99,976	104,322	47,850
Driver Inspections	95,460	92,802	98,985	103,489	47,465
Driver OOS Rate*	6.6%	6.1%	7.2%	6.3%	6.2%
Vehicle Inspections	59,452	55,316	59,717	58,023	24,190
Vehicle OOS Rate**	14.2%	13.6%	13.6%	12.9%	14.3%

* Driver OOS rate is based on inspection levels I, II, and III. Visit http://ai.fmcsa.dot.gov for explanation of inspection levels.

** Vehicle OOS rate is based on inspection levels I, II, and V.

SOURCE: Independent Evaluation Panel, based on FMCSA MCMIS website, June 20, 2008, snapshot. Downloaded from A&I website: http://ai.fmcsa.dot.gov, available as of September 13, 2008.

C. Driver Convictions

We found a total of 6 cases out of the more than 12,000 truck trips in which a demonstration project driver was convicted for a driving offense (Table 6). FMCSA provided the Panel with records of driver convictions from its Mexican Conviction Database for 2000 to 2008. Our review of the records from this database shows that from September 7, 2007, to September 6, 2008, there were three cases in which a demonstration project driver was convicted for a driving offense (Table 6). All three drivers were from the same Mexican carrier. One of the convictions was for speeding 6 to 10 miles beyond the speed limit, and two were for general equipment failure, such as inoperable brake lights or insufficient tire tread. We also reviewed the conviction records for the demonstration project drivers in the Commercial Driver's License Information System (CDLIS) and found three additional convictions during this same period. These three convictions were for improper lane change and defective lights and were not listed in the Mexican Conviction Database.

Table 6. Mexican Drivers' Convictions in the United States: 2007 to 2008

State	Date	Conviction	Source of information
New Mexico	10/15/2007	Equipment used improper/obstructed	Mexican Conviction Database and CDLIS
New Mexico	11/16/2007	Equipment used improper/obstructed	Mexican Conviction Database and CDLIS
New Mexico	1/31/2008	06-10 > speed limit	Mexican Conviction Database and CDLIS
California	2/5/2008	Improper lane/location	CDLIS
Texas	2/14/2008	Defective lights	CDLIS
New Mexico	7/17/2008	Defective lights	CDLIS

Source: Independent Evaluation Panel, based on FMCSA Mexican Conviction Database and Commercial Driver's License Information System, as of September 18, 2008.

3. The Demonstration Carriers Were Similar in Certain Organizational Characteristics to the Larger Group That Expressed Initial Interest. However, a Larger Sample Would Be Needed.

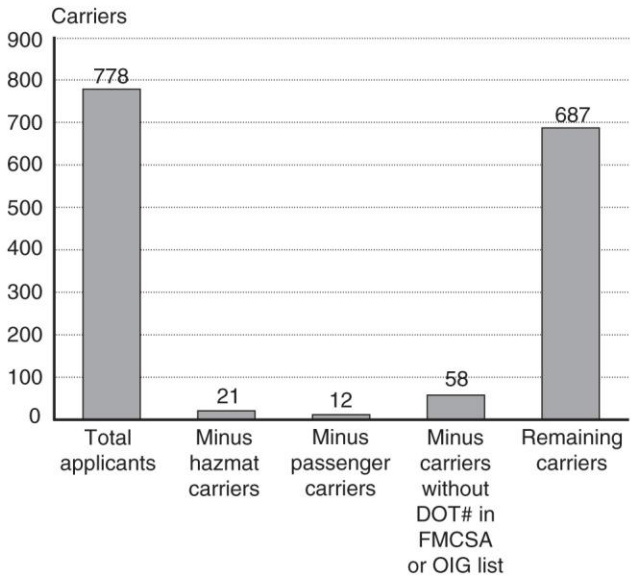
As stated in the objectives and scope section of this report, Public Law 110-28, Section 6901, required the Secretary of Transportation to ensure that "the demonstration project consists of a *representative* and *adequate* sample of Mexico-domiciled carriers likely to engage in cross-border operations beyond U.S. municipalities and commercial zones on the U.S.-Mexico border" (emphasis added). Sections A and B below present our findings on this requirement.

A. Representativeness of Participant Carriers

The 27 Participating Mexican Carriers Are Similar in Certain Organizational Characteristics to the Larger Group of Nearly 700 Carriers That Initially Applied for the Demonstration Project.

Based on company business profiles, the 27 carrier participants have characteristics that are representative of the larger group of 687 carriers that applied for long-haul authority and that the Panel determined are truly eligible for the project. There is no statistical difference between the two groups on the basis of business type, number of drivers reported, number of vehicles reported, number of trailers reported, and reported miles traveled. But additional data would be needed to compare the safety performance of the participant carriers to the safety performance of other applicant carriers. We cannot say that because the two groups have similar organizational characteristics they would have similar safety performance.

Figure 6: Determining the Universe for Representativeness and Safety Analysis



SOURCE: Independent Evaluation Panel, based on FMCSA and OIG data for carriers who applied for OP-1 authority.

In assessing whether the Mexican carriers participating in the demonstration project are representative of the carriers likely to participate in long-haul operations, we settled on 687 carriers as our universe after extensively analyzing the pool of carriers that had submitted applications for long-haul authority in the United States (Figure 6). We used the same universe for analyzing the

inspection, violation, and crash information for the demonstration project.

FMCSA provided the Panel with a list of the 778 carriers that had applied for long-haul authority. The agency also provided information on whether it considered an individual carrier for the project, dismissed the carrier because of an incomplete application, or considered the carrier to be ineligible for the project because of various reasons, including carrying hazardous materials, carrying passengers, or not receiving clearance after vetting by the Department of Homeland Security. We separately obtained the list of applicants the Office of Inspector General (OIG) had compiled from FMCSA records on the applications carriers had submitted.

We analyzed the information from FMCSA and OIG and determined that of the 778 applicants, 21 were hazmat carriers, 12 were passenger carriers, and 58 did not have a USDOT identification number and therefore could not be matched to FMCSA's MCMIS safety records to extract their safety information. See Table H-6 in Appendix H for our analysis of the applicant carriers.

We conducted statistical tests on the remaining 687 to determine if the 27 participant carriers are representative of this larger group based on five selected characteristics: organization type, number of drivers reported, number of trucks reported, number of trailers reported, and reported miles traveled. These five characteristics had the most complete information (i.e., less missing data) on the applicants from both the MCMIS census file and the OIG file.[22]

We conducted a statistical analysis that was similar to what OIG presented in its March 10, 2008, interim report on the demonstration project.[23] We based our comparison of the participant carriers and the larger applicant group on the five selected characteristics. For each characteristic, we compared the 27 carriers in the demonstration project with the larger group of 687 carriers that applied. We also compared them with carriers that failed the PASA, carriers that FMCSA dismissed, and carriers with other status, such as incomplete application, that passed PASA but did not purchase the required insurance, and failed vetting (Table 7). The participating Mexican carriers accounted for about 4 percent of this applicant pool, and the carriers that failed the PASA accounted for another 5 percent. Both of these groups have similar business organization structures and are equally split between owner-operators and corporations. See Table H-7 in Appendix H for additional data on the carrier categories.

[22] Other carrier characteristics from the information submitted for the application for long-haul operating authority and stored in the MCMIS census database and compiled by OIG include the following: currently operates in the United States, affiliated with U.S. companies, type of cargo carrier intends to haul, type of registration applied for, hazardous material movement, and border crossing carrier plans to use.
[23] Office of Inspector General, Interim Report on NAFTA Cross-Border Trucking Demonstration Project, MH-2008-040, March 10, 2008.

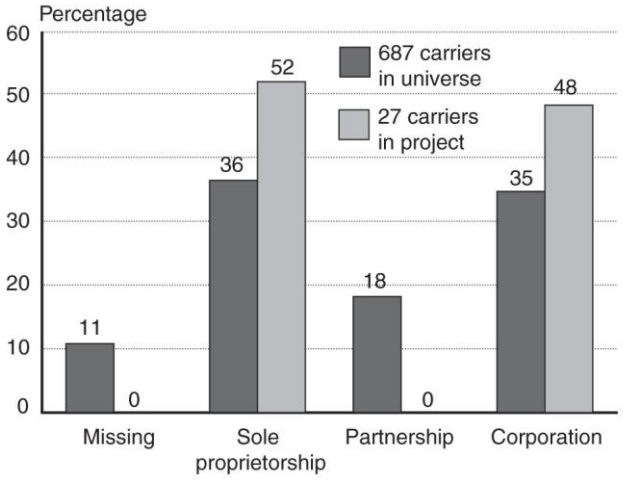
Table 7. Comparison of Participant Carriers and Applicant Carriers by Carrier Status

	Business Organization Type				
Carrier Categories	**Missing data**	**Sole Proprietorship**	**Partnership**	**Corporation**	**Total**
Universe of Carriers	74	250	125	238	687
Carriers in Demonstration Project	0	14	0	13	27
Carriers Failed PASA	4	14	2	12	32
Carriers' Application Dismissed	33	65	101	92	291
Carriers with Other Status	37	157	22	121	337

SOURCE: Independent Evaluation Panel, September 2008.

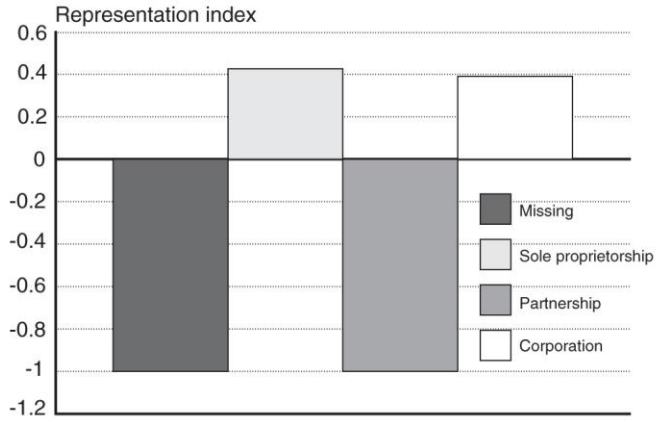
Figure 7 presents the percent share by type of business organization for the 27 participant carriers and the larger universe of applicants. Figure 8 presents an example of a representation index between the participant and applicant carriers. An index value greater than or equal to zero indicates similarity on that variable between the two groups. We determined that the 27 participant carriers are mostly representative of or have characteristics similar to the larger group that initially expressed interest and applied for OP-1 long-haul operating authority, in terms of organization type, number of drivers reported, number of trucks reported, number of trailers reported, and reported miles traveled. However, this does not indicate the two groups are similar in safety performance.

Figure 7: Comparison of Participant Carriers to Universe of Carriers



SOURCE: Independent Evaluation Panel, September 2008.

Figure 8: Representative Index for Comparing Participant Carriers to Universe of Carriers



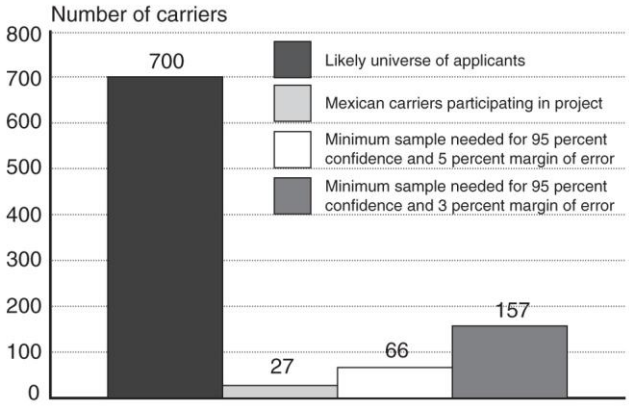
SOURCE: Independent Evaluation Panel, September 2008.

B. Adequacy of Participant Sample

FMCSA Did Not Have an Adequate Sample of Mexico-Domiciled Carriers Participate in the Demonstration Project to Allow Statistically Valid Conclusions from the Comparison of Participant Carriers to Applicant Carriers.

Our evaluation of FMCSA data determined that during the 12-month demonstration project, FMCSA did not have an adequate sample of Mexico-domiciled carriers transporting goods beyond the U.S. border commercial zone, because only 27 carriers participated. According to FMCSA records, the agency conducted PASAs on 99 Mexico-domiciled carriers. Of these carriers, 67 passed and were prequalified for the project. The remaining 32 failed the safety audit. This means that during the 12 months that are the focus of this report, the maximum possible sample size FMCSA could have obtained from all the applications it received was 67 carriers.

Figure 9: Minimum Sample Size of Carriers Needed for Statistically Significant Results



SOURCE: Independent Evaluation Panel, September 2008.

To obtain an adequate sample of Mexican carriers, FMCSA would need to revisit all the applications that the agency received, review the application materials, and determine if it is possible to increase the number of participants. If FMCSA had met its original target of granting provisional long-haul authority to 100 Mexican carriers, then the agency would have had an adequate sample to perform comparative analysis of carriers' safety performance at a 95 percent confidence level with a 5 percent margin of error (Figure 9). See Appendix B for further discussion of how we assessed the adequacy of the sample size.

4. FMCSA Conducted the Demonstration Project Substantially in Accordance with the Rules Set by the Department and Congress.

A. Pre-Authority Safety Audits

FMCSA established an effective mechanism and adequate eligibility criteria for entry into the demonstration project. The agency implemented statutory regulations to check all Mexican-carrier trucks in Mexico before they entered into the demonstration project. The Pre-Authority Safety Audits (PASAs) were comprehensive and effective in ensuring that participant carriers met U.S. motor carrier safety requirements. The performance of these on-site safety reviews provided a measure of assurance that Mexican carriers with inadequate safety systems were excluded from the demonstration project.

FMCSA published the requirements and process for granting provisional authority for long-haul operations beyond the commercial zone in its June 8, 2007, Federal Register notice and in policy memoranda to its field staff. Currently, FMCSA issues two types of Mexico-domiciled motor carrier authority, and a carrier may not hold both types of authority concurrently:

- Certificate of Registration: For operations within U.S. municipalities and commercial zones on the U.S.-Mexico border.
- Provisional Operating Authority: For operations beyond the U.S. municipalities and commercial zones on the U.S.-Mexico border.[24]

We determined that FMCSA put in place an effective mechanism for granting the provisional OP-1 long-haul authority. This mechanism comprised a carrier application review, a PASA, review of public comments, and verification of carrier insurance coverage before granting the authority.

FMCSA used comprehensive criteria for preapproving carriers for long-haul authority. The approval criteria included verifying carrier safety compliance, conducting on-site vehicle inspections and carrier fleet safety checks, verifying carrier insurance and financial responsibility, verifying drivers' CDL and Mexican Licencia Federal, checking compliance with hours-of-service rules, and verifying presence of a drug- and alcohol-testing protocol.

[24] FMCSA Memorandum MC-ECE-0026-06: Requirements for Inspection of Mexico-Domiciled Carrier Operating under the Cross-Border Demonstration Project, July 12, 2007.

Specifically, FMCSA conducted 100 percent of the PASAs on-site at the Mexican carriers' places of business in Mexico.[25] These PASAs verified that the carriers had systems in place for five mandatory eligibility criteria:

1. A drug- and alcohol-testing program
2. A system for complying with hours-of-service requirements
3. Proof of adequate insurance and financial responsibility
4. Records of periodic maintenance and inspections for vehicles that the carrier intends to use in the United States
5. Verification of qualified drivers.

The process FMCSA put in place for conducting the safety audits involved the following eight steps:

1. Mexican carrier submits an application with the required fees.
2. FMCSA reviews the application for completeness of all the required paperwork.
3. FMCSA checks the carrier profile against U.S. databases with the Department of Homeland Security and screens out "ineligible" carriers.
4. FMCSA conducts the PASA.
5. FMCSA publishes a notice of the carrier's impending authority in the FMCSA Register.
6. The public is given the opportunity to comment on the impending authority.
7. The Mexican carrier secures the necessary insurance, and FMCSA verifies and authenticates the coverage.
8. FMCSA grants provisional operating authority to the successful Mexican carrier.

FMCSA auditors and inspectors took steps to verify the information Mexican carriers provided to them by using other sources of information, such as insurance companies and third-party consortiums that administer the carriers' drug programs. However, we observed that certain information was not available to them for verification in the field. For example, during the on-site review, the FMCSA personnel did not have access to information on Mexican truck inspection reports, crash reports, and drivers' violations not provided by the applicant carriers. We checked with Mexican SCT authorities to determine if Mexico gathers and stores such information in a database and whether such a database is available for FMCSA to access. During a trip to Mexico City, we found that SCT compiles such information and has functioning databases to house these data. We provide our review of these databases later in this report.

[25] Public Law 107-97 Section 350(a)(1)(C)(i) requires that 50 percent of all safety examinations of Mexican carriers be conducted on-site in Mexico.

We confirmed that during the PASAs, FMCSA field personnel verified applicant carriers' insurance coverage. FMCSA guidance required that the carriers have the necessary insurance before the operating authority was granted, not at the time of the PASA. This makes sense because it allows a carrier to defer the extra expense of buying insurance for long-haul operations until the carrier is notified it has passed the safety audit and will be granted long-haul authority. We separately reviewed the FMCSA Licensing and Insurance (L&I) database to independently determine whether the information contained on the 29 carriers that passed the PASA is thorough, and we found no major problem. Later in this report, we comment on how FMCSA could better use the L&I information to enforce its insurance requirements for long-haul operations in the United States.

Our review further confirmed that FMCSA had a process in place for the public to comment on notices of successful applicants in the FMCSA Register. We asked FMCSA if the agency received any comments on the successful applicants and, if so, how the agency handled such comments before granting OP-1 operating authority to any of the 29 carriers. The agency told us that nearly all the substantive comments were filed by parties to the lawsuit against the Department regarding the demonstration project and raised many of the issues currently before the Ninth Circuit Court of Appeals. FMCSA noted that it would not be appropriate to respond to the comments in light of the pending decision by the court. However, the agency indicated it was reviewing the comments to determine whether the project could be implemented more effectively. The agency informed us that public comments are available on the Internet.[26]

Additionally we reviewed FMCSA information on the 99 carriers that were subjected to the PASA. FMCSA gave the Panel access to its repository of original application materials for the demonstration project in its Electronic Document Management System (EDMS).[27] We reviewed information from EDMS on the 29 carriers that were granted OP-1 authority and confirmed the PASAs were supported with documentation gathered with the established procedures. The application materials and the additional supporting documents we reviewed covered the five mandatory areas for drug- and alcohol-testing programs, hours-of-service requirements, insurance and financial responsibility, vehicle maintenance and inspections, and driver qualification. Of the 99 Mexico-domiciled carriers that were subjected to the PASA, 67 passed and 32 failed.

[26] FMCSA provided the Panel with the following link: www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=FMCSA-2007-28055.

[27] EDMS is the central repository for FMCSA documents. It allows for the storage and retrieval of documents, including compliance reviews, enforcement cases, and safety-audit documents, in a paperless environment.

Comparison of Safety Violations Found in PASAs and New-Entrant Safety Audits

As noted in the objectives and scope section of this report, the Department stated in a June 8, 2007, Federal Register notice that the Panel's evaluation of the demonstration project would review whether in the course of conducting PASAs, FMCSA detected violations of 11 critical safety regulations in any greater proportion than found in conducting new-entrant safety audits of U.S.-domiciled carriers.[28] In specifying the standards to be used to evaluate the demonstration project, FMCSA also stated that "using carrier PASA data, the evaluation will assess the number of carriers that had violations of 11 critical safety regulations, compared to the average found for U.S. carriers. *The FMCSA has determined that a violation of any of the following 11 critical regulations is so significant that it merits failure of the safety audit"* (emphasis added).[29]

We observed that FMCSA did find fewer violations of the 11 critical safety regulations among the Mexican carriers that passed the PASA than among the U.S. carriers that passed the new-entrant audits. About 6 percent, or 4, of 67 Mexican carriers had 1 of the 11 safety violations. In contrast, about 58 percent, or 7,314, of 12,673 U.S. new-entrant carriers had at least 1 of the 11 violations. However, we also found that although FMCSA followed the applicable regulations and statutory requirements for admitting Mexican carriers into the demonstration project, the agency did not implement its statement in the June 8, 2007, Federal Register notice that a violation of any of the 11 critical regulations is so significant that it merits failure of the safety audit. Four Mexican carriers that passed the PASA failed 1 of the 11 critical safety regulations, and three of these carriers subsequently participated in the project. Thus, in this case, the agency did not do what the Federal Register notice said it was going to do in relation to its use of these 11 critical regulations in determining when a carrier passed or failed the safety audit. These 4 carriers did not retain all of their drivers' logs in the company records, although they each had procedures for recording driver duty status.

We asked FMCSA to explain this apparent discrepancy. The agency said in its response to the Panel that it "failed to clearly articulate the basis for proposing that the Panel use the evaluation criteria described in the above referenced statements." FMCSA explained that the 11 regulations were originally identified in a Notice of Proposed Rulemaking (NPRM) published on December 21, 2006, for changing the evaluation criteria in the new-entrant safety audits conducted on U.S. and Canadian carriers.[30] The agency stated that it never intended to fail Mexican motor carriers in the demonstration project for noncompliance with any of the 11 safety regulations referenced in the notice,

[28] In the United States, all new motor carriers (private and for hire) operating in interstate commerce are required to apply for registration as a "new entrant" to receive a USDOT number.
[29] 72 Federal Register 31883 (8 June 2007).
[30] 71 Federal Register 76730 (21 December 2006).

because it has no regulatory basis for doing so. It further noted that if the amendments to the New Entrant Safety Assurance Process as proposed in the December 21, 2006, Federal Register NPRM are finalized, it may then be necessary for FMCSA to amend regulations governing the PASA for Mexico-domiciled motor carriers to ensure consistency for all carriers operating in the United States. The agency informed the Panel that during the PASAs, its field inspectors explained to the Mexican carriers the regulatory requirement on retaining all drivers' logs, and its border inspectors monitored the carriers each time their drivers entered the United States.

11 Critical Safety Regulations and the Regulatory Factors

FMCSA selected the 11 critical safety regulations from a list of more than 100 regulatory requirements it uses in its new-entrant safety audits because, according to the agency, "violations of these 11 reflect a clear lack of basic safety-management controls."[31] FMCSA first identified these 11 critical regulations in the Federal Register NPRM published on December 21, 2006, in which it proposed changing the New Entrant Safety Assurance Process for U.S. and Canadian motor carriers. In this proposed rule, U.S. and Canadian motor carriers would fail a new-entrant safety audit if they were found not to comply with any 1 of the 11 selected FMCSA regulations deemed critical for safe operations, but as of October 2008, this rule has not been made final. The agency also noted that "most of these 11 regulations correspond to requirements necessary for Mexico-domiciled long-haul carriers to obtain authority to operate in the United States, as established by Congress under Section 350(a)(1)(B) of the Fiscal Year 2002 DOT Appropriations Act."[32] FMCSA advised the Panel that it now expects a final rule on December 24, 2008.

The 11 safety violations are:
1. Failing to implement an alcohol and/or controlled substances testing program.
2. Using a driver who has refused to submit to an alcohol or controlled substances test required under 49 CFR 382.
3. Using a driver known to have tested positive for a controlled substance.
4. Knowingly allowing, requiring, permitting, or authorizing an employee with a CDL which is suspended, revoked, or canceled by a state or who is disqualified to operate a commercial motor vehicle.
5. Knowingly allowing, requiring, permitting, or authorizing a driver to operate a commercial motor vehicle while the driver is disqualified.
6. Operating a commercial motor vehicle without having in effect the required minimum levels of financial responsibility.
7. Using a disqualified driver.

[31] 71 Federal Register 76730 (21 December 2006).
[32] 71 Federal Register 76733 (21 December 2006).

8. Using a physically unqualified driver.
9. Failing to require a driver to make a record of duty status.
10. Requiring or permitting the operation of a commercial motor vehicle declared out of service before repairs are made.
11. Using a commercial motor vehicle that has not been periodically inspected.

These 11 violations are part of the regulations that are grouped into six regulatory factors that FMCSA uses as the evaluation criteria to assess safety compliance during the audits.[33] Currently, new-entrant U.S. carriers and Mexican carriers pass or fail a safety audit based on meeting a preponderance of the elements within each of these six regulatory factors, not on the individual regulations (which include the 11 critical regulations). New-entrant U.S. carriers fail the safety audit if they failed three of the six regulatory factors. Mexican carriers that applied for long-haul operating authority failed the PASA if they failed three of five regulatory factors (Factor 5 relates to the transportation of hazardous materials and was not applicable to the PASA, because Mexican carriers that transport hazardous materials were not permitted to participate in this demonstration project).[34] The six regulatory factors are:

Factor 1: General requirements (insurance, crash reporting, and vehicle marking)
Factor 2: Driver requirements (drug testing and CDL)
Factor 3: Operational requirements (hours of service and driving commercial motor vehicle)
Factor 4: Vehicle requirements (inspection, repair, and maintenance)
Factor 5: Hazardous material requirements (not applicable to demonstration project)
Factor 6: Accident history (federally reportable accident rate for past 12 months)

Procedures in the PASA and New-Entrant Safety Audit

We observed that although the PASA and the new-entrant safety audit had similar regulatory requirements, the two audit procedures were not identical.

- First, the PASA was conducted on Mexican carriers in the project *before* they were granted operating authority. The new-entrant safety audit is now conducted on U.S. carriers within the first 18 months *after* they have started operations.

[33] 49 CFR 365 requires FMCSA to use these six factors as the evaluation criteria for ranking a carrier's safety systems and determining whether a carrier passes or fails a safety audit. A regulatory factor is a combination of related safety regulations that FMCSA classifies into acute and critical. Acute regulations are those where noncompliance is so severe that it requires immediate corrective action by a motor carrier regardless of the carrier's overall basic safety management controls. Critical regulations are those where noncompliance relates to management controls or operational controls or both. Each acute and critical regulation has several components.
[34] 73 Federal Register 46964 (12 August 2008).

- Second, the PASA was more stringent. It had two phases: phase 1 for verification and phase 2 for auditing. In contrast, the new-entrant safety audit had a single phase that was equivalent to the PASA's phase 2. In addition to the regulatory factors listed above that are used during a safety audit to assess carriers, FMCSA is required to verify five mandatory eligibility elements even before a carrier can enter into the audit phase of the PASA.[35] FMCSA uses phase 1 of the PASA for initial screening and verification of the five mandatory eligibility elements (drug- and alcohol-testing program, hours-of-service requirements, insurance and financial responsibility, vehicle maintenance and inspections, and driver qualification), and phase 2 for auditing compliance with the safety regulations. For example, FMCSA inspectors verified that carriers had drivers' logs in phase 1 and audited the accuracy and completeness of the drivers' logs in phase 2. Mexican carriers had to prove in phase 1 that they met the five mandatory eligibility elements before the audit could advance to phase 2. If FMCSA could not verify all five mandatory elements in phase 1 of the PASA, then phase 2 was not performed and the Mexican carriers were not granted OP-1 operating authority. FMCSA audited the 11 critical safety regulations during the second phase, but not on the basis that all 11 were failure critical.

Summary of Factual Findings

To assess how the two types of audits (PASA and new entrant) fared on these 11 critical safety regulations, we obtained additional data from FMCSA on the safety audits the agency performed on U.S. carriers that were new entrants between September 7, 2007, and September 6, 2008.[36] We then compared these data with results of Mexican carriers that passed the PASA.

FMCSA data indicate that the agency did find fewer violations of the 11 critical safety regulations among the Mexican carriers that passed the PASA than among the U.S. carriers that passed the new-entrant audits. FMCSA conducted PASAs on 99 Mexican carriers, of which 67 carriers passed. The agency conducted safety audits on 12,745 U.S. carriers that were new entrants, of which 12,673 carriers passed.

We found that of the 67 Mexican carriers that passed the PASA, 4 carriers had 1 of the 11 safety violations (Table 8). Three of the four carriers were subsequently granted OP-1 operating authority and participated in the demonstration project. Of these 3 Mexican carriers that were in the project, 2 carriers passed all five regulatory factors and 1 carrier passed four of the five factors. This carrier failed Factor 2 (driver requirements)

[35] 49 CFR 365, Appendix A, subpart E.

[36] Note that although the U.S. carriers were new entrants during this period, some of safety audits were performed before this period of time.

because, unlike the other two carriers, it also failed on three other driver related regulations that are not part of the 11 critical regulations.

All 4 of these Mexican carriers violated item number 9 (failing to require a driver to make a record of duty status) at the time of the PASA. These 4 carriers had procedures in place for requiring record of duty status, but all failed item number 9 because they failed to retain all of the drivers' logs in the carriers' records, as required at the time of the PASA. On this regulation, FMCSA cited the 4 Mexican carriers for a violation just as it would have cited U.S. and Canadian carriers. In contrast, of the 12,673 new-entrant U.S. carriers that passed the new-entrant safety audit, 7,314 carriers had at least 1 of the 11 safety violations. The 4 Mexican carriers had a total of 4 violations (i.e., an average of 1 violation per carrier) and the 7,314 new-entrant U.S. carriers had a total of 11,104 violations (i.e., an average of 1.5 violations per carrier).

Table 8. Summary Results of 11 Critical Safety Regulations for PASA and New-Entrant U.S. Carrier Safety Audit

	11 Critical Safety Regulations	PASA: Mexican carriers that had violation	New-entrant safety audit: U.S. carriers that had violation
1	49 CFR 382.115(a)and (b): Failing to implement an alcohol and/or controlled substances testing program	0	3,784
2	49 CFR 382.211: Using a driver who has refused to submit to an alcohol or controlled substances test	0	0
3	49 CFR 382.215: Using a driver who has tested positive for a controlled substance	0	0
4	49 CFR 383.37(a): Allowing, requiring, permitting, or authorizing an employee with a CDL which is suspended, revoked, or canceled by a state or who is disqualified to operate a commercial motor vehicle	0	22
5	49 CFR 383.51(a): Allowing, requiring, permitting, or authorizing a driver who is disqualified to drive a commercial motor vehicle	0	3
6	49 CFR 387.7(a): Operating a commercial motor vehicle without having in effect the required minimum levels of financial responsibility	0	693
7	49 CFR 391.11(b)(4): Using a physically unqualified driver	0	0
8	49 CFR 391.15(a): Using a disqualified driver	0	0
9	49 CFR 395.8(a): Failing to require a driver to make a record of duty status	4	3,039
10	49 CFR 396.9(c)(2): Requiring or permitting the operation of a commercial motor vehicle declared out of service before repairs are made	0	23
11	49 CFR 396.17(a): Using a commercial motor vehicle that has not been periodically inspected	0	3,540

SOURCE: Independent Evaluation Panel, October 2008.

B. Check Every Truck Every Time

The Department honored its commitment to check every truck every time, and FMCSA implemented a key quality-control plan to guarantee that Mexican carriers were checked, as the Department had committed to do. FMCSA fulfilled the Department's commitment to ensure that every participant truck was checked every time the truck crossed the border into the United States. Our evaluation verified that FMCSA jointly developed 25 site-specific plans with U.S. Customs and Border Protection (CBP) to conduct the checks of Mexican trucks in the demonstration project.

The 25 site-specific plans ensured that every OP-1 truck marked with an *X* was examined each time it crossed the border.[37] These checks were a critical component of the mechanism the agency put in place to review drivers' licenses to ensure that vehicles were being operated by qualified drivers. The checks also verified that vehicles had a valid Commercial Vehicle Safety Alliance (CVSA) sticker showing that they had been properly inspected within the previous 90 days. If a participant *X* truck did not have a valid sticker, then the border inspector was required to conduct a North American Standard Level I Inspection[38] on that vehicle at the border-crossing facility.

FMCSA had a system in place to effectively check at the border every participant truck crossing into the United States. With the exception of a few deviations from the agency's 25 site-specific plans, FMCSA ensured that every participant truck was examined each time. We independently verified this at 20 of the 25 border-crossing facilities at the U.S. border with Mexico. We also obtained and analyzed information FMCSA border inspectors compiled for the crossings in the demonstration project.

To determine how well FMCSA checked the CVSA decals and drivers' licenses, we analyzed the agency's records for the more than 12,000 truck crossings that occurred from September 7, 2007, to September 6, 2008, for all the 29 participant carriers, including the two carriers that dropped out (Table 9). For the CVSA decal checks, our review identified only 83 records out of 12,000 with inconclusive responses, such as "not applicable," "no," or "none." While the responses for this CVSA decal data field were

[37] FMCSA rules require Mexican carriers granted OP-1 operating authority to add the suffix *X* next to the USDOT number on all trucks that operate in the United States. Carriers that operate in the commercial zone with OP-2 certificates of registration are required to display the suffix *Z* next to the USDOT number on their trucks.

[38] According to CVSA, there are several levels of inspections, ranging from the most comprehensive Level I inspection that evaluates both the driver and vehicle to inspections with a more specific area of focus, such as hazardous or radioactive materials (see www.cvsa.org/programs/nas.aspx). A North American Standard Level I Inspection includes a vehicle and driver inspection and a physical inspection of the underside of the vehicle. Level II includes a visual walk around the vehicle and driver inspection but does not include the underside of the vehicle. Level III covers the driver only. Level IV covers special inspections, usually one-time inspections of a particular item. Level V covers the vehicle only.

inconclusive for 83 records out of the 12,000, the agency records showed information from the field inspectors that further explained the reasons behind the inconclusive responses. Eighteen records of the 83 had no additional explanation. Of these 18 trucks, 9 went beyond the border commercial zone.

For the driver's license checks, our review identified 68 records out of the 12,000 with inconclusive responses, such as "not applicable" or "no." Of these records, 45 actually had driver's license numbers and 23 did not. All 23 records with no driver's license numbers were for trips that stayed within the commercial zone.

Table 9. Analysis of FMCSA Data on Checking Every Truck Every Time: September 7, 2007, to September 6, 2008

Border Checks	Number of Records
Checking CVSA decals	
Total records	12,026
Inconclusive data decals	83
No explanatory reason	18
Trips beyond commercial zone	9
Checking driver's license	
Total records	12,026
Inconclusive data licenses	68
No driver's license number	23
Trips beyond commercial zone	0
Checking English-language proficiency	
Total records	12,026
Inconclusive data on English test	88
Response was "no" or missing information	28
Trips beyond commercial zone	10

SOURCE: Independent Evaluation Panel, based on FMCSA data for demonstration project, September 2008.

Our analysis of the FMCSA records for the CVSA decal and driver's license checks and our observation of how the checks were conducted at the border crossings lead us to conclude that the agency substantially fulfilled the Department's commitment to ensure that every participant truck and every driver were checked every time the truck

crossed the border into the United States. We note that the mechanism for checking the 27 participant carriers and their 101 trucks is far more stringent than what is in place for more than 7,000 Mexican carriers that operate in the commercial zone and about 860 carriers that have "grandfathered" or certificate of registration authority to operate in specific states across the United Sates.[39]

C. Key Quality-Control Plan to Ensure FMCSA Checked Every Truck Every Time

Though delayed until March 2008, FMCSA implemented a quality-control plan to ensure the effectiveness of the mechanisms they developed to check every truck every time. In a September 6, 2007, letter to Congress in response to the Inspector General's report, the Department agreed to acquire monthly data from U.S. Customs and Border Protection (CBP) and cross-check these data against its own demonstration crossing data to ensure that every truck was checked every time. This quality-control measure was developed to provide the assurance that the checks FMCSA performed on vehicles and drivers at the border-crossing facilities were being done as planned.

FMCSA provided the Panel with two summary reports of its implementation of this quality-control plan.[40] The first report, dated March 28, 2008, covered the agency's comparative analysis of its demonstration project data and CBP data from September 6, 2007, to February 29, 2008. This showed that FMCSA matched 96.2 percent of truck crossings recorded in the demonstration project to CBP's independently collected data. The second report, which was undated, covered the agency's analysis of crossings that occurred from May 1, 2008, to May 31, 2008. This second report showed that FMCSA matched 99.6 percent of its crossing records to CBP records. By August 2008, FMCSA was working to correct issues that were contributing to the mismatches. The agency also provided the Panel with a list of the unmatched records by carrier, number of vehicles, and dates of crossing for March, April, May, and June 2008. Although we reviewed the documents on the quality-control plan that FMCSA provided to us, we did not independently talk with CBP or analyze CBP data separately because of time and resource constraints.

We report that FMCSA and the state safety officials put in place sufficient site-specific plans to allow them to check each driver and truck each time they entered the United States. Nevertheless, because each border-crossing facility had a different physical setup, the FMCSA staff had to use extra vigilance at some locations. At Santa

[39] We comment on these "grandfathered" and "certificated" carriers later in this report.
[40] FMCSA Memorandum: Quality Control Plan Every Vehicle Every Time Policy, March 28, 2008, and FMCSA Memorandum: Quality Control Plan Every Vehicle Every Time Policy, undated (received via email on August 21, 2008).

Teresa, New Mexico, for example, because the FMCSA/state inspection facility is located about one-quarter mile down the road from the CBP facility and there is an egress road between the two facilities, it is possible for a rogue driver to try to evade the federal and state inspectors. We asked New Mexico safety enforcement officials how often they catch drivers trying to evade them, and the response was very seldom. They indicated that when it happens, it is usually a driver who is not sure if the vehicle being driven, such as a small truck weighing less than 10,000 pounds or a pickup truck, requires an inspection.

As part of FMCSA's quality-control plan, the agency also implemented a GPS vehicle-tracking system to monitor and track participant trucks. The agency contracted with a private company to mount GPS devices on trucks participating in the demonstration project. As of September 6, 2008, a total of 116 trucks had been equipped with the device—73 Mexican trucks and 43 U.S. trucks. FMCSA informed the Panel that the agency has used the GPS data from the Mexican trucks for monitoring Mexican drivers' compliance with U.S. hours-of-service rules. FMCSA provided the Panel with spreadsheets from the field offices that showed the agency used data from the tracking devices to verify the accuracy of the every-truck-every-time inspection records. Additionally, FMCSA told us they found one case where a demonstration carrier had three hours-of-service violations outside the commercial zone in the same month. The agency noted these violations occurred in July 2008. The violations appeared in the GPS data as apparent hours-of-service violations. The FMCSA inspector contacted the motor carrier and obtained the driver's logs for the days in question. Upon reviewing the logs, the inspector discovered the driver had falsified the logs to conceal the hours-of-service violations. The agency said it is following up with appropriate action, which starts with a compliance review.

We asked FMCSA's state safety enforcement officers in the four southern border states (California, Arizona, New Mexico, and Texas) whether they have used these GPS data for any monitoring. All four states had not asked for or used the GPS information at the 12-month mark of the demonstration project. Only Texas officials knew the GPS data existed.

Additionally, we independently reviewed the trip destination information from the decal check dataset with information from the GPS tracking devices mounted on three-quarters of the participant trucks. FMCSA gave us access to the online database behind the GPS system. In September 2008, we found that it was cumbersome to track any specific demonstration project vehicle in the online tracking system. We used 16 OP-1 inspection records for July and August 2008 in our effort to track the historical positions and destinations of OP-1 trucks. In nearly all the cases, we found no truck in the system that fit the exact profile of a crossing. We were not able to track specific trucks to the specific trip destinations provided in the CVSA decal check dataset.

We encountered the following specific issues in our review of the online database behind the GPS system:

- The "driver directory" did not have any driver information. However, even if driver information was in the database, the system uses a driver ID that is different from FMCSA's every-truck-every-time inspection reports.
- OP-1 trucks are only identified in the tracking system by a "vehicle ID" that is different from the vehicle's USDOT number. For a carrier that has multiple trucks in the project, it is not possible to individually identify the carrier's trucks. The FMCSA inspection reports identify the trucks individually by their USDOT numbers and do not include the GPS database vehicle ID. Therefore, it was not possible to check the current location or historical location of a specific truck.
- The "truck directory" included information on only 6 OP-1 carriers (Avomex, Hermanos Hayashi, David Klassen Peters, Fidepal, Grupo Behr, and GCC Transporte) and 25 Mexican-domiciled trucks. Therefore, for the majority of OP-1 carriers, we could not track their trucks' locations.

Despite the difficulty of independently verifying the locations and destinations of the participant trucks in the demonstration project, we believe having the tracking devices is an important safety control. As the devices are mounted on all the remaining project trucks, FMCSA should require more accurate and specific vehicle location and destination data from the database behind the tracking system. These data would allow the agency to improve its monitoring of project trucks when they operate beyond the border zone.

D. English-Language Proficiency

U.S. federal motor carrier regulations require all commercial motor vehicle drivers to read and speak the English language sufficiently to converse with the general public, understand highway traffic signs and signals in the English language, respond to official inquiries, and make entries on reports and records.[41] We observed FMCSA border officers checked the English-language skills of Mexican drivers in the project.

Early in the demonstration project, the Panel recommended to FMCSA that the agency should check the ability of Mexican drivers to recognize U.S. road signs. FMCSA followed up on this recommendation and implemented a new policy by adding a road-

[41] Public Law 110-28, Section 6901(b)(2)(iii), requires the Secretary of Transportation to publish specific measures to be used to ensure compliance with 49 CFR 391.11(b)(2) and 365.501(b).

sign test as part of its English-proficiency test. This new policy guidance, issued on February 1, 2008, involved checking the ability of Mexican drivers to understand U.S. road signs.

FMCSA's protocols for implementing the U.S. federal motor carrier regulations requiring all commercial motor vehicle drivers to have sufficient English-language skills has two components. First, the drivers must be able to read and speak English sufficiently to converse with inspectors and the general public, respond to official inquiries, and make entries on reports and records. Second, they must be able to demonstrate that they understand the meaning of highway traffic signs and signals that are in English. See Appendix E for the two policy memoranda on the English-language and road-sign tests.

For the demonstration project, FMCSA inspectors at the border tested Mexican drivers' proficiency in English by asking a series of verbal questions and requiring the drivers to respond in English. Inspectors separately tested comprehension of U.S. road signs by showing drivers a set of signs and having them respond in English or Spanish to indicate their understanding of the meaning of the signs. The fact that drivers could respond with a Spanish word to indicate their understanding of the meaning of a sign (for example, "stop" or "detour") in no way compromised their English proficiency, since their speaking and reading skills were tested separately in the verbal part of the test. Our review verified that FMCSA gave both tests to project participant drivers at the border-crossing facilities when they entered the United States.

To determine how well FMCSA checked Mexican drivers' proficiency in the English language at the border, we reviewed the agency's records on border inspections of the participant drivers and identified 88 records out of 12,000 with inconclusive responses, such as "not applicable" or "no," or with missing the information. Of these 88 records, 28 had "no" as the response or were missing the data. Only 10 of the 28 records were for trips that went beyond the commercial zone (Table 9).

To review how the English-language proficiency policy was being implemented nationwide, we interviewed state officials in charge of coordinating FMCSA's Motor Carrier Safety Assistance Program (MCSAP) activities in the 48 contiguous states and the District of Columbia. Since over 95 percent of the truck trips in the demonstration project were destined to the four southern border states—California, Arizona, New Mexico, and Texas—we focused our review of English proficiency on these states' experience with the demonstration project's participants. In our discussions with the four states, we determined that there is no consistency in how state safety officials implement FMCSA's English-proficiency guidance outside the border commercial zone in each state. At the border-crossing facilities, state personnel team with FMCSA staff to inspect Mexican trucks, but only FMCSA staff conduct the English-language test. Away from the border facilities, each state handles the English-language issue differently. We

determined from our interviews that one practical explanation for the differences in implementing this guidance was the proportion of the state's enforcement personnel that was bilingual. The farther away from the border, the less likely the safety officer was bilingual and the more likely an entire roadside inspection would be in English, including the road-sign test if it was performed. California, Arizona, and New Mexico indicated they do not require their state safety officers to enforce the English-proficiency test. Texas said they do enforce it mostly in the commercial zone but not consistently in the rest of the state.

In our discussions with nonborder states on the English-language proficiency of Mexican drivers, we determined that while most nonborder state MCSAP officials were familiar with the FMCSA policy, these states had extremely limited contact with the carriers participating in the demonstration project. The majority of these states indicated they have had no contact with demonstration project drivers and therefore have not had the opportunity to enforce the English-language policy. However, these nonborder state officials noted that when they have made contact with Mexican drivers who are not proficient in English, the drivers are driving for Mexican carriers who are not participating in the demonstration project or for U.S. motor carriers. Officials in three nonborder states also noted that they encounter non-Mexican truck drivers who are not proficient in English. For example, one official indicated that the state has had 53 violations for not speaking English—10 Canadians and no Mexicans. Another official noted that they often encounter truck drivers with European and Asian backgrounds who are not proficient in English.

FMCSA needs to conduct further outreach to its state MCSAP officials to address the inconsistent implementation of the English-language proficiency requirement by state officials, better clarify the agency's policy guidance, and monitor implementation of the guidance.

E. Insurance

U.S. federal regulations require all commercial motor carriers to be insured through an insurance company licensed in a state in the United States. For the demonstration project, FMCSA required Mexico-domiciled carriers to establish they have financial responsibility as required by 49 CFR 387. The agency reports carrier insurance information in its Licensing and Insurance (L&I) database. This information is also publicly available on the agency's website.[42]

[42] http://li-public.fmcsa.dot.gov/LIVIEW/pkg_html.prc_limain.

We independently reviewed the insurance information publicly available through the website, as well as copies of the insurance documents the demonstration project carriers submitted to FMCSA. We also contacted the five insurance companies that provided coverage for the 29 carriers that were granted OP-1 long-haul authority. We verified that all 29 Mexican carriers obtained the required $750,000 in bodily injury and property damage liability insurance before they received their long-haul operating authority. Of the 29 carriers, 24 had the minimum $750,000 of coverage, 4 had $1 million of coverage, and one had $5 million of coverage.

In our discussions with the state MCSAP safety enforcement officials from California, Arizona, New Mexico, and Texas, we asked if field inspectors encountered demonstration project trucks operating without the required insurance. The state officials indicated that their border personnel have access to FMCSA's L&I system and can use it to verify a carrier's insurance. Texas officials indicated that most of their insurance-related problems are with Mexican trucks that belong to carriers authorized to operate within the border zone. The officials stated that the most frequent insurance problem is when these OP-2 carriers purchase one-day insurance, which they are legally allowed to do, and try to use the expired insurance on other days. The demonstration project carriers are not allowed to purchase one-day insurance.

In addition to examining the carrier insurance records that FMCSA maintains and contacting the insurance providers, we reviewed FMCSA's enforcement of its policy regarding maintenance of insurance coverage. In June 2008, FMCSA informed the Panel that one of the Mexican carriers in the demonstration project, Transportes Francis Burgos Vizcarra, had allowed its insurance to lapse and had operated a truck in the United States without the required minimum insurance coverage. We reviewed FMCSA's official action concerning this serious violation and determined the agency imposed civil penalties on the carrier as required by 49 CFR 386.83 and 386.84. The agency charged Transportes Francis Burgos Vizcarra with two violations:

1. One violation of 49 CFR 387.7(a): Operating a motor vehicle without having in effect the required minimum levels of financial responsibility.

2. One violation of 49 CFR 392.9a(a)(1): Operating without the required operating authority.

As required by FMCSA's regulations, the agency conducted a compliance review on this OP-1 Mexican carrier after its truck was caught operating illegally in the United States during the period when its insurance had lapsed. The agency fined the carrier $4,940 and revoked its OP-1 operating authority. According to FMCSA, the carrier paid the penalty in full before its operating authority was restored. We compared the fine the agency imposed in this case against what the agency published in its June 8, 2007,

Federal Register notice for violation of insurance coverage. We found that the maximum penalty for violating insurance is up to $16,000 for each violation of financial responsibility regulations.[43] Although FMCSA took immediate action to address this serious safety violation, it did not impose the maximum fine. The agency informed us that its normal practice for determining the actual civil penalties assessed in each regulatory violation is based on a set of limits defined in 49 CFR 386.81. It also considers information available at the time the penalty is imposed concerning the nature and gravity of the violation and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require.

We further reviewed FMCSA's decal check information and the MCMIS online database to determine how many times the carrier had its drivers cross into the United States during the one month from May 14, 2008 to June 12, 2008, when it had no insurance and no operating authority. The Panel wanted to know how this violation occurred, since all trucks were supposed to be checked each time, the agency knew this particular carrier's insurance was going to be revoked, and the agency had GPS tracking equipment mounted on the carrier's trucks.

Our review of FMCSA MCMIS records show that although the carrier's insurance was canceled on May 14, 2008, and its OP-1 authority was revoked on May 20, the carrier continued to cross into the United States and operate under no operating authority, since its OP-2 was never reinstated. From May 14, 2008, when the insurance was canceled, until June 12, 2008, when the OP-1 authority was reinstated, the carrier's trucks crossed the border about 36 times and were inspected 35 times. Clearly, FMCSA's system for its border inspectors to be notified of a canceled insurance policy and the system for having the inspectors verify this information at the border failed in this instance.

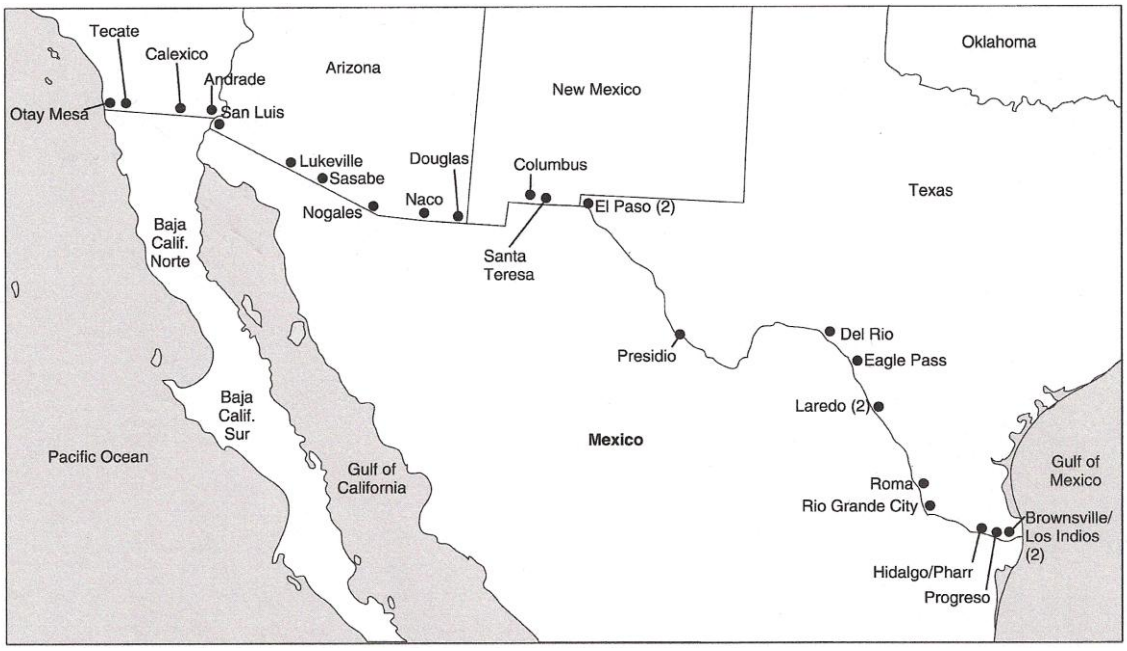
FMCSA did not report any other insurance-related problems to the Panel, and our interviews of the five insurance companies insuring the 29 demonstration project carriers did not indicate any further problems. However, FMCSA needs a more effective monitoring system to stop carriers who operate without the required insurance before they enter the United States. Since this incident, the agency reports it has taken steps to update the insurance database that its field inspectors are required to use at the border during inspections to check for insurance coverage and operating authority.

[43] 72 Federal Register 31882 (June 8, 2007).

F. Observation of Border Inspections

We conducted a comprehensive review of FMCSA's monitoring and enforcement mechanisms at the U.S.–Mexico border from February 2008 to August 2008. We directly observed FMCSA and state safety operations at 21 of the 25 commercial truck crossings at our southern border (Figure 10). We observed how FMCSA implemented its plans for checking and inspecting trucks and drivers participating in the demonstration project as they crossed the border into the United States. We focused our review of border operations on the safety inspections conducted on incoming trucks, not on FMCSA's coordination or border activities with the Customs and Border Protection (CBP). We were aware that the Office of Inspector General was reviewing that coordination in relation to the demonstration project.

Figure 10: Commercial Border Crossings Along U.S.-Mexico Border



NOTE: The numbers in parentheses indicate the number of ports of entry for those locations with more than one.

SOURCE: Adapted from Government Accountability Office, North American Free Trade Agreement: Coordinated Operational Plan Needed to Ensure Mexican Trucks' Compliance With U.S. Standards, GAO-02-238, December 2001.

Table 10. Border-Crossing Facilities Visited By Panel, OP-1 Crossings, and 2007 Incoming Truck Crossings

Border crossing/port of entry	Visited by Panel's independent inspectors	OP-1 crossings, Sept. 7, 2007–Sept. 6, 2008	2007 truck crossings
California (4 locations)			
Otay Mesa	Yes	2,471	738,765
Tecate	Yes	47	77,320
Calexico	Yes	910	323,348
Andrade	No		478
Arizona (6 locations)			
San Luis	Yes	3	42,716
Lukeville	Yes		481
Sasabe	No		296
Nogales	Yes	33	295,267
Naco	No		4,628
Douglas	Yes		26,718
New Mexico (2 location)			
Columbus	Yes		5,695
Santa Teresa	Yes	6,060	40,267
Texas (13 locations)			
El Paso (BOTA and Ysleta)	Yes	53	782,936
Presidio	No		7,158
Del Rio	Yes		63,460
Eagle Pass	Yes	2,382	100,227
Laredo (Columbia and World Trade)	Yes	243	1,563,836
Roma	Yes		8,066
Rio Grande City	Yes	312	34,263
Hidalgo/Pharr	Yes		486,756
Progreso	Yes		40,796
Brownsville (Los Indios and Veteran's)	Yes		239,023
Total	**21**	**12,514**	**4,882,500**

SOURCE: Independent Evaluation Panel. OP-1 data from FMCSA, and 2007 border-crossing data from the Bureau of Transportation Statistics.

Table 10 presents the border-crossing facilities our independent truck inspectors visited to observe FMCSA and state safety inspections. While we visited 21 border-crossing sites, FMCSA records on the demonstration project indicate that the participant trucks used only 11 of the 25 commercial border ports of entry. It appeared to us that FMCSA had adequate resources to handle the traffic at the sites we visited and that border personnel were able to handle the demands placed on them by the demonstration project.

We determined that FMCSA had adequate site-specific plans for the commercial truck crossings and for conducting the truck checks and inspections in a manner consistent with the Department's commitments and notices published in the Federal Register. Additionally, our review of the border-safety operations found that FMCSA has inspection equipment and the capacity to conduct meaningful truck inspections of the demonstration project trucks at the 21 border-crossing facilities our independent inspectors visited.

In the conduct of our independent observations, our truck inspectors interviewed the federal and state inspectors, interacted with the Mexican drivers, and observed how specific elements of the North American Standard Inspection were conducted. Our inspectors focused on the following five elements:

- Did the inspector conduct the English-proficiency test?
- Did the federal or state inspector *check* and *verify* that the Mexican driver was properly licensed?
- Did the inspection seem to cover all the required safety elements?
- Did the inspector observe all the violations?
- Was the border crossing so busy that the inspectors could not or did not inspect all the OP-1 demonstration carriers/vehicles?

For all five elements that we directly observed during 50 inspections on demonstration project trucks, FMCSA and state inspectors conducted adequate and thorough inspections (Table 11). The English-proficiency test was conducted in all 50 inspections. The Mexican drivers' licenses were properly checked during these inspections. The border-crossing facilities were not so busy that the border inspectors could not inspect all the demonstration trucks. There was only one inspection of an OP-1 truck where our independent inspector noted that the federal or state inspector did not observe a vehicle defect and did not conduct one of the five inspection elements. Table 11 presents the summary comment our inspector reported for this particular inspection, which occurred at the Otay Mesa, California, border crossing on August 12, 2008. See Table H-5 in Appendix H for sample comments our truck inspectors made on the Mexican trucks and the inspection process they observed.

At the 21 border-crossing facilities, our inspectors also observed inspections of trucks that were not part of the demonstration project. We noted that although in general FMCSA conducted complete inspections on these commercial zone trucks, the agency examined the demonstration trucks more closely and inspected them more thoroughly and more frequently than the other Mexican trucks. We report our summary observations of the inspections of the commercial zone trucks for basic comparison of the OP-1 and OP-2 inspections. It was not within the scope of our evaluation to review FMCSA's requirements for Mexican trucks to operate in the commercial zone.

Table 11. Summary of Critical Observations of 142 Inspections at the 20 Border-Crossing Facilities the Panel's Independent Inspectors Visited: February to August 2008

Critical inspection categories	Responses for observed inspections of demonstration project trucks (OP-1)		Responses for observed inspections of commercial zone trucks (OP-2)	
	Yes	No	Yes	No
English-proficiency test performed	50	0	84	8
Driver's license checked and verified	50	0	90	2
All required safety inspection elements covered	49	1	82	10
Official inspector observed all the violations	49	1	84	8
Crossing so busy that official inspector could not inspect all OP-1 demonstration project trucks	0	50	NA	NA

NA = Not applicable

Comment for instance where response for OP-1 truck inspection was no:

Did the inspection seem to cover all the required elements? The inspector did not inspect the trailer emergency relay valve or the upper fifth wheel plate (king pin). Both items are a part of the level I inspection. The Federal Inspector completed the Level IV "special study" report on the vehicle once the CHP [California Highway Patrol] had completed the Level I inspection of the trailer. The Federal Inspector explained that they record the examination of a "demonstration project" vehicle as a level III inspection if the CHP does not inspect the vehicle also. Since the trailer had an expired CVSA sticker, CHP conducted a Level I inspection. In this instance, the Federal Inspector recorded her examination as a Level IV "special study" inspection.

Inspection at Otay Mesa, CA on August 12, 2008.

Did the inspector observe all the violations you saw? No. The rear end protection device on the trailer was inadequate. It was bent in and poorly repaired. It did not extend to within 18" of the side extremities as the conspicuity treatment was not adequate for the length of the trailer. A 40 ft. trailer requires at least 20 ft. of conspicuity treatment. The trailer had 6 ft. on each side.

Inspection at Otay Mesa, CA on August 12, 2008.

SOURCE: Independent Evaluation Panel, based on direct observation by the Panel's independent truck inspectors at the 21 border crossing facilities visited.

On the issue of checking if Mexican drivers were properly licensed, we observed that the federal and state inspectors at the 21 sites we visited had access to electronic databases for verifying Mexican commercial drivers' licenses. During the inspections we observed, the inspectors were able to use their computers to access necessary databases for driver's license information.

G. State Enforcement Officers' Implementation of Demonstration Project Guidance

FMCSA took steps to ensure project participant carriers' compliance with its motor carrier safety rules. These actions included ensuring that state enforcement officials were prepared to monitor the participant carriers and understood how to implement the demonstration project's policy guidance. We verified state safety officials' understanding of the enforcement of demonstration project guidance and found that states had received training and guidance from FMCSA.

Because FMCSA relies on state safety officers for inspections and enforcement action throughout the country with funds from its Motor Carrier Safety Assistance Program (MCSAP), in August and September 2008 we contacted the 48 contiguous states and the District of Columbia to determine their understanding of the demonstration project regulations and hear their experiences with the project. We were able to directly interview safety officials from all 48 states and the District of Columbia.

FMCSA's main mechanism for ensuring compliance with its motor carrier safety rules on the nation's highways is developing and enforcing regulations for use by both federal and state agencies on commercial motor carrier operation. The agency uses a number of enforcement activities to ensure compliance with its safety regulations, including conducting roadside inspections and compliance reviews at motor carriers' places of business. At the southern border-crossing facilities, FMCSA has its own federal staff working alongside state personnel. However, the agency depends on state personnel for enforcement activities throughout the rest of the United States.

Our interviews of state enforcement officials focused on the following specific areas:

- Familiarity with the enforcement requirements for the demonstration project
- Training FMCSA provided to state as part of preparation for the project
- English-language proficiency assessment
- Familiarity with specific requirements for placing Mexican vehicles out of service at an interior location beyond the commercial border zone
- States' general observations from their experience with the demonstration project trucks, including crashes and violations

During our interviews of state officials, we determined that FMCSA provided materials specific to the demonstration project to the states through the MCSAP coordinators. These materials were made available to the states before and during the 12-month project. Most of the states were familiar with the commercial motor vehicle awareness training FMCSA offered through the International Association of Chiefs of

Police (IACP) and CVSA. The majority of states were aware of and familiar with the "train-the-trainer" sessions FMCSA offered through IACP.[44]

We specifically wanted to know the extent to which any training materials or guidance had filtered to the officers on the front lines who conduct the actually enforcement activities. Most of the states indicated that the information they received from FMCSA was forwarded to officers in state-level agencies, such as the California Highway Patrol and the Texas Department of Public Safety. However, state officials expressed concerns over the difficulty of passing the information on to all enforcement officers at nonstate organizations, such as metropolitan area, city, and town police departments.

Officials from two states expressed concern that while they received material on dealing with the demonstration project trucks, they really needed training on how to deal with Mexican trucks that venture out of the commercial zone and illegally operate in their states. An official from a northern border state said that the enforcement officers need training on how to deal with Canadian trucks operating in the state.

From our interviews it was clear that FMCSA prepared guidance and provided materials through the MCSAP coordinators to the states. But the agency did not have a coordinated plan to check on the effectiveness of the materials it was sending to the states or the "train-the-trainer" program. The agency needs to improve its outreach to the states to allow it to get reliable feedback on how successfully the training information is getting to the field staff.

[44] FMCSA offers Foreign Commercial Motor Vehicle Awareness Training to states through the IACP and CVSA. These training sessions are offered to state officers, who then can offer the training to state personnel, as well as police officers from metropolitan areas and cities.

5. FMCSA Currently Has Three Operating Authorities for Mexican Carriers to Operate in the United States.

In the conduct of our evaluation, we determined that there are many more Mexican carriers operating legally beyond the border commercial zone than there are in the demonstration project—861 versus 27 (Table 12). These other Mexican carriers have been operating legally beyond the commercial zone since 1982. See Appendix D for a brief history of the operating authorities. We observed that FMCSA currently has three operating authorities for Mexican carriers to operate within the United States: 1) authority to operate under this demonstration project; 2) authority to operate within specific states or anywhere in the United States under pre-NAFTA provisions; and 3) authority to operate within the border commercial zone.

Table 12. Mexican Carriers Operating in the United States under FMCSA's Three Operating Authorities

Operating Authority	Number of Carriers	Number of Trucks
Current demonstration project: OP-1 provisional authority to operate anywhere in the United States	27 carriers as of September 6, 2008	101
Certificated and grandfathered carriers: Permanent authority to operate between limited designated points beyond the commercial zone and to operate beyond the commercial zone	861 active carriers in 2008	1,749
Border commercial zone carriers: OP-2 permanent authority to operate within the commercial zone	7,134 carriers in 2008	28,533

SOURCE: Independent Evaluation Panel, September 2008.

As part of our evaluation, we asked FMCSA to provide us with information they have on the operating authority of the nondemonstration project Mexico-domiciled carriers that are allowed to operate in the United States beyond the commercial zone. The agency informed the Panel that there are two types of carriers that fall in this category: "grandfathered carriers" and "certificated carriers."

Type I: Grandfathered Carriers

- The Bus Regulatory Reform Act of 1982, originally codified as 49 USC 10922(l), imposed a moratorium that limited the operations of Mexico-domiciled carriers to the commercial zones within the four border states. After enactment of the

Interstate Commerce Commission Termination Act of 1995, which repealed Section 10922(l) and all other provisions of the Interstate Commerce Act, it was re-enacted into law as 49 USC 13902(c) in 1995.

- Before the moratorium in 1982, three Mexico-domiciled property carriers and one passenger carrier were granted authority to operate beyond the commercial zones, and they continue to do so today. According to FMCSA, out of the three carriers, one has had no inspections and crash activity since 2003 and has no vehicle data in MCMIS.
- They are required to file evidence of insurance with FMCSA and maintain proof of insurance (Form MCS-90) on their trucks.

TYPE II: Private and For-Hire Exempt Mexico-Domiciled Carriers

- About 1,200 to 1,300 carriers received Certificates of Registration after the Mexican moratorium was issued. They are allowed to operate beyond the commercial zone.[45] Of these, about 860 are currently active. They are:
  - Mexico-domiciled
  - Majority U.S.-owned (i.e., each operator must be more than 51 percent U.S.-owned)
  - Private carriers or for-hire carriers of exempt commodities (i.e., commodities a carrier can transport without needing to apply for a motor carrier number)
- They are limited to operating between specific points (determined by the certificate).
- Cargo must have origin or destination of Mexico. They can bring goods from Mexico to points in the United States and bring goods back from points in the United States to Mexico, but they cannot pick up cargo in the United States and deliver it to some other place in the United States.
- Both the Certificate of Registration and proof of insurance must be maintained on the truck.

[45] The issuance of Certificates of Registration to "certificated carriers" was authorized by Section 226 of the Motor Carrier Safety Act of 1984, as amended by Section 9111(g) of the Truck and Bus Safety and Regulatory Reform Act of 1988. Section 226 was originally codified at 49 USC 10922(l) but was redesignated as Section 10922(m) as a result of subsequent amendments to Section 10922. Section 10922 (along with the rest of the Interstate Commerce Act) was repealed in 1995 by the ICC Termination Act. However, 49 U.S.C. 13902(c) has been interpreted as retaining all restrictions imposed by former Section 10922(m). See Appendix D for a history of the legal authority for Mexican carriers operating beyond the U.S. border commercial zone.

FMCSA estimates that the total number of active Mexican certificated carriers with USDOT numbers that are authorized to travel beyond the commercial zone is 1,246. Of this group, the number in the L&I database and the MCMIS database after excluding carriers with no inspection activity since 2003 is 859.

During our review, we noted that while these approximately 860 active carriers are legally allowed to operate beyond the border, FMCSA does not require them to have a special suffix on their trucks like the *X* and *Z* that OP-1 and OP-2 carriers have to display. Federal and state inspectors will have difficulty distinguishing these 860 carriers that can legally operate beyond the commercial zone from OP-2 carriers that illegally operate beyond the zone. The agency should consider requiring the grandfathered and certificated carriers to add a special letter to their trucks to make it easier to identify them when they operate legally beyond the border zone.

Being able to correctly identify the grandfathered and certificated carriers would also make it easier to identify the OP-2 carriers when they illegally go beyond the border zone. We examined FMCSA's MCMIS inspection records on the location of safety inspections conducted on OP-2 carriers from September 7, 2007, to September 6, 2008. Our simple analysis showed that about 20 OP-2 carriers were inspected in 12 states beyond the commercial zone.

The existence of three operating authorities with varying safety requirements offers an opportunity for the Department to bring Mexican carriers currently operating beyond the commercial zone in the United States under a single safety umbrella. A combined safety program would enable FMCSA to better monitor and identify the unsafe carriers among these groups so that the carriers could improve their operations or FMCSA could put them out of service. Such a program would also streamline FMCSA's safety oversight process, allowing the agency to focus its resources on expanding the number of compliance reviews it conducts on Mexican carriers with poor safety records. The Panel recognizes that certain safety features of the current demonstration project, such as the PASA, would not be applicable to the grandfathered and certificated carriers, although a vigorous program of compliance reviews could be a substitute. However, other features, such as a special suffix next to the USDOT number for easy identification of trucks when they operate beyond the border zone and the every-truck-every-time checks at the border, could be applicable to these long-haul carriers.

FMCSA informed the Panel that it intends to develop a more strategic enforcement focus for its inspection procedures in conjunction with the compliance review process established for Mexican carriers operating in the United States.

6. Additional Demonstration Project Matters

A. Drug- and Alcohol-Policy Compliance

Section 350 of the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 2002 requires that FMCSA conduct a Pre-Authority Safety Audit (PASA) of Mexico-domiciled motor carriers seeking long-haul authority to operate beyond the commercial zone, including verification that carriers have a drug- and alcohol-testing program consistent with 49 CFR 40.

In our evaluation, we determined that the PASAs FMCSA conducted on Mexican carriers that applied for the demonstration project addressed the drug- and alcohol-testing requirements, including a key requirement to use drug-testing laboratories certified by the U.S. Department of Health and Human Services (HHS). To understand FMCSA's implementation of these requirements, we reviewed the agency's conduct of the PASA, interviewed officials of USDOT's Office of Drug and Alcohol Policy and Compliance (ODAPC), interviewed Mexico's SCT officials, and visited drug-collection sites in Mexico and the United States. We also reviewed the three reports the Government Accountability Office (GAO) published in 2007 and 2008 on USDOT's drug program.[46]

a) PASA Drug Information

We reviewed FMCSA records gathered during the PASA and determined that each of the 29 carriers granted OP-1 operating authority presented the necessary proof to establish that it had a drug- and alcohol-testing program. We independently reviewed the records each carrier submitted as part of the PASA and compared the information to the summary monitoring dataset FMCSA provided to the Panel. Our review found no discrepancies in the information.

Our further analysis of the drug and alcohol information indicated that of the 32 carriers that failed the PASA, 10 failed solely on the drug and alcohol requirement. Another 4 failed because of the drug and alcohol requirement and other requirements, such as lack of a proper vehicle maintenance system or financial responsibility.

FMCSA records show that of the 67 Mexican carriers that completed the PASA, 63 have agreed to use U.S. collection sites for submitting their drug and alcohol specimens. Only 4 carriers opted to use collection sites in Mexico. Currently, only 2 out of the 27 carriers with long-haul authority to operate beyond the commercial zone have

[46] Motor Carrier Safety: Improvements to Drug Testing Programs Could Better Identify Illegal Drug Users and Keep Them off the Road, GAO-08-600, May 2008. Motor Carrier Safety: Preliminary Information on Challenges to Ensuring the Integrity of Drug Testing Programs, GAO-08-220T, November 1, 2007. Drug Testing: Undercover Tests Reveal Significant Vulnerabilities in DOT's Drug Testing Program, GAO-08-225T, November 1, 2007.

opted to use collection sites in Mexico. Both of these carriers (Translogistica SA de CV and Transportadora Terrestre SA de CV) are located in Mexico City. FMCSA informed the Panel that the drug-test collection facilities in Mexico are required to send specimens to HHS-certified labs in the United States for processing.

b) Drug-Collection Sites in Mexico

With the cooperation of the Mexican government, the Panel conducted its own independent assessment of urine-collection and alcohol-testing procedures at four drug-collection sites in Mexico. Our objective was to determine whether SCT's urine-collection, alcohol-testing, and collection-site security procedures were consistent with 49 CFR 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

We observed that Mexico has a drug-collection program with protocols that are at least equivalent to U.S. protocols, but some aspects of the specimen-collection procedures are not identical to those specified in the requirements in 49 CFR 40. See Appendix G for further discussion of our observations. Although elements of the Mexican drug program are not identical to U.S. protocols, we observed that the specimen-collection process in Mexico is performed in a secure fashion. Because all SCT collections in Mexico are conducted under direct observation, the donor has almost no opportunity to introduce substitute samples or to adulterate the specimen. Additionally, because all collectors are licensed medical professionals (i.e., physicians) and are employed directly by SCT, collector training and oversight appear consistent and complete.

The specific elements where SCT's protocols differ from 49 CFR 40—for example, having the donor rather than the collector split the specimen, allowing donors to drink less than 40 ounces of fluid when they cannot provide an adequate specimen, using a plastic bag with one pouch rather than two, and initialing and dating the seals before sealing the specimen bottles—could easily be addressed and harmonized. We urge FMCSA and ODAPC to work with SCT to resolve these differences.

c) Drug-Collection Sites in the United States

As part of our evaluation of the Department's demonstration project, in August 2008, we reviewed drug-testing procedures at eight selected U.S. collection sites for testing commercial truck drivers. We selected six from an FMCSA list of collection sites that the 29 Mexican carriers indicated they would use for submitting their urine specimens to U.S. laboratories under the demonstration project requirements. We

selected two additional publicly advertised sites to cover two border-crossing localities used by the project's participant carriers. All eight collection sites are located in the border commercial zone—four in Texas, three in California, and one in Arizona.

At these U.S. collection sites, we conducted announced visits to determine how specimen collectors were following 49 CFR 40 and USDOT drug protocols, including the following three elements: 1) requiring collectors to validate that a donor has a correct photo identification before the drug test in order to prevent someone else from taking the test; 2) requiring collectors to ensure that there is no water source that could be used to dilute a specimen; and 3) requiring that donors not have access to any items that could be used to adulterate a specimen, such as soap, cleaning agents, disinfectants, or other chemicals. More specifically, we reviewed 18 protocols from the Department's drug-testing requirements. We adapted our list from the 16 elements GAO tested in its review of the USDOT drug policies, published in a November 2007 report.[47]

Overall, we found that all eight U.S. sites passed at least 15 of the 18 protocols. Two of the eight sites—one in Texas and one in California—passed all 18 protocols (Table 13). Eight sites followed the protocol for requiring proper photo identification from the donor. Seven sites passed the requirement for securing water sources and making them unavailable to donors. Seven sites ensured that no adulterants were in the privacy rooms. Three of the sites, however, had unsecured drop ceilings and trash bins that could be used for concealing adulterants.

Although we did not directly compare the eight U.S. collection sites with the four Mexican collection sites, we gathered information on the same 18 USDOT protocols when we visited the Mexican sites. The reason we did not conduct a direct comparison is that 3 of the 18 protocols are not directly applicable. In Mexico, all specimen collection is done under direct observation, so a Mexican donor has no opportunity to introduce a foreign substance into the specimen.

Table 13 also presents the data we gathered on the Mexican sites for the 18 protocols. All four Mexican collection sites we visited passed at least 13 of the key protocols. The primary protocol that all four Mexican sites failed was the requirement that the collector, not the donor, seal the specimen bottle and date and initial the seal after placing it on the bottle.

Current U.S. requirements in 49 CFR 40.67 prohibit observed specimen collections except in very limited situations where there is suspicion that the employee may have tried, may try, or may be trying to impeach the integrity of the collection process. According to ODAPC, in August 2008, the Department issued a final rule to

[47] Government Accountability Office, Drug Testing: Undercover Tests Reveal Significant Vulnerabilities in DOT's Drug Testing Program, GAO-08-225T, November 1, 2007.

implement a new procedure in these limited situations to check for devices designed to circumvent the drug tests.

In an August 26, 2008, Federal Register notice, the Department clarified the implementation of this new rule and requested comments about whether to make direct observation mandatory for follow-up and return-to-duty testing (not for all testing).[48] This testing would be applied to known drug users after they have completed substance abuse treatment and returned to work. As of October 2008, ODAPC indicated it has reviewed the docket comments and will publish a notice in the Federal Register as soon as final decisions are made regarding implementation of direct observation for follow-up and return-to-duty testing.

[48] 73 Federal Register 50222 (26 August 2008).

Table 13. Findings of 18 Critical Elements of Drug-Collection Process at 8 U.S. Sites and 4 Mexican Sites: August 2008

Elements (the three key elements are in italics)	U.S. Sites								Mexican Sites			
	1	2	3	4	5	6	7	8	1	2	3	4
1. Did the collector require the employee to provide appropriate identification?	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*
2. Did the collector ask the employee to empty his/her pockets and display items to ensure no items are present that could be used to defeat the test?	P	P	P	P	P	P	P	P	P	P	P	P
3. Did the collector instruct the employee to wash his/her hands under the collector's supervision?	P	P	P	F	P	P	P	P	P	P	P	P
4. Did the collector direct the employee to provide a specimen of at least 45 ml?	P	P	P	P	P	P	P	P	P	P	P	P
5. Did the collector direct the employee to not flush the toilet?	P	P	P	P	P	P	P	P	P	N/A	N/A	N/A
6. Did the collector direct the employee to return with the specimen as soon as possible after voiding?	P	P	P	P	P	P	P	P	P	N/A	N/A	N/A
7. Were all sources of water in the restroom secured?	*P*	*P*	*F*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*
8. Was bluing agent placed in the toilet or was it secured with tape?	P	P	P	P	P	P	P	P	P	P	P	P
9. Did the collector check the temperature of the specimen?	P	P	P	P	P	P	P	P	P	N/A	N/A	P
10. Was the employee allowed to place the tamper-evident seals from the Federal Drug Testing Custody and Control Form (CCF) onto the specimen bottles?	P	F	P	F	P	P	P	P	P	P	P	F
11. Did the collector seal and date the specimen?	P	F	F	P	F	F	F	P	F	F	F	F
12. Did the collector have the employee initial the specimen bottle seals after placing them on the bottles?	P	P	P	P	P	P	P	P	F	F	F	F
13. Did unauthorized people have access to the collection site?	P	P	P	P	P	P	P	P	P	P	P	P
14. Did the employee have access to the collection materials or supplies?	P	P	P	P	P	P	P	P	P	P	P	P
15. Did the employee have access to items that could be used to adulterate or dilute the specimen?	*P*	*P*	*P*	*P*	*P*	*F*	*P*	*P*	*P*	*P*	*P*	*P*
16. Was the employee under the supervision of the collector or appropriate site personnel at all times?	P	P	P	P	P	P	P	P	P	P	P	P
17. Was the collection site properly secured to prevent unauthorized access?	P	P	P	P	P	P	P	P	P	P	P	P
18. Was the collection room secure so there are no places to hide specimens (e.g., drop ceiling)?	P	P	F	F	P	F	P	P	F	P	P	P
Pass	18	16	15	15	17	15	17	18	15	13	13	13
Fail	0	2	3	3	1	3	1	0	3	2	2	3
Not Applicable										3	3	2

NOTE: P=Pass, F=Fail, and N/A=Not Applicable.

SOURCE: Independent Evaluation Panel, September 2008.

B. Safety Databases in Mexico for Drivers' Licenses, Truck Inspections, and Crashes

We verified that Mexico has developed three databases with critical information on the safety records of drivers engaged in commercial motor vehicle operations, on vehicle and driver violations, and on truck accidents. However, we did not audit these Mexican databases.

As part of our evaluation, we met with senior SCT officials in Mexico City who are responsible for Mexico's motor carrier safety program to verify the existence of databases for monitoring drivers' licenses, truck inspections, driver violations, and crashes. SCT officials indicated that the database of drivers' licenses is fairly well established and has improved significantly over the past five years in terms of coverage of licensed drivers and system reliability. The two databases for commercial motor carrier inspections and crash data are fairly recent and are undergoing improvements in terms of numbers of inspections and reportable accidents that are entered into the system.

Mexican Commercial Driver's License (CDL)

Officials at SCT's Dirección General de Autotransporte Federal (DGAF)[49] described to the staff specific measures that Mexico has taken to enhance the security of its Licencia Federal de Conductor and improve the Mexican Licencia Federal Information System (LIFIS). They also described database improvements that have been made to the Mexican access bridge to FMCSA's Commercial Driver's License Information System (CDLIS).

More specifically, since 2000, DGAF has added features to the CDL to improve the plastic licenses, including signature encryption, digital photos, two-dimensional bar codes, and embedded unique identification codes. The officials informed us that they have also taken steps to significantly improve the security of the LIFIS data system. The specific controls they described include tighter management of user accounts, monitoring of the user accounts, streamlined levels of approval authority for issuing CDLs, and a penalty for misuse of user accounts.

We determined that while the enhancements to the physical driver's license card that SCT issues are important and have added to the security of the card, the improvements to the database are far more important. What is critical is the database behind the CDL. Being able to check a CDL and verify its authenticity in the database is most vital.

[49] This agency, General Directorate of Federal Trucking, is SCT's equivalent to USDOT's FMCSA.

Mexican Road Transport Inspections and Crash Database

Officials at SCT's DGAF also described to us the agency's information system for recording, monitoring, and tracking roadside inspections and crashes. They demonstrated an online version of the system and showed the Panel's staff summary statistics from the database for 2006 and 2007. The database contains information on vehicle and driver violations by type of violation. It also contains information on driver traffic convictions that occurred in Mexico.

The officials noted that since Mexico finalized its regulations for conducting roadside inspections in 2000, SCT has conducted commercial vehicle inspections in accordance with CVSA inspection procedures and out-of-service criteria. SCT works with the Mexican federal police to conduct these roadside inspections on federal roads. They indicated that as of July 2008, there are more than 500 SCT federal inspectors in addition to the federal police. SCT has 20 certified CVSA inspectors, and 10 are train-the-trainers who train the 500 federal inspectors on CVSA inspection procedures. They told us that Mexican federal police officers have also taken training directly from CVSA.

Additionally, the SCT officials gave us a demonstration of the database for commercial motor vehicle crashes. This database is a joint product of two SCT agencies—the motor carrier agency, DGAF, and the transportation medicine agency, Dirección General de Protección y Medicina Preventiva en el Transporte (DGPMPT). SCT uses this database for recording accidents, fatalities, and injuries and also for managing its transportation medicine program, which includes the drug and alcohol program.

The SCT officials noted that because in Mexico there are several public institutions at the federal, state, and local levels that deal with traffic accidents, 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. They told the Panel that in general, accident information is more comprehensive on the federal road network and less complete on state and municipal road networks.

We asked the officials about databases for insurance of commercial motor carriers. They informed us that currently there is no Mexican federal law that mandates carriers or insurance companies to report insurance information to SCT. While SCT inspectors verify insurance during roadside inspections, there is no database for checking for lapsed insurance or verifying the insurance coverage. We note that this is an area where for the long term, FMCSA could work with SCT to develop the necessary regulations and procedures to allow SCT to track insurance coverage in Mexico. Currently, this lack of an insurance database in Mexico does not impact the demonstration project, because the United States requires Mexican carriers to be insured by a U.S.-based insurance firm.

C. FMCSA and State Staff Resources at the U.S.-Mexico Border

During our visits to the 21 border-crossing facilities at the U.S.-Mexico border, we observed that FMCSA and the four border states had an adequate number of inspectors to conduct safety inspections on the 27 project carriers and their 101 trucks. During the 12-month project, there were sufficient federal and state inspectors to inspect the long-haul OP-1 carriers and enforce the safety rules for the demonstration project. Table 14 summarizes the FMCSA and state inspection staff at the southern border as of April 2008.

Table 14. Federal and State Safety Inspection Staff at the U.S.-Mexico Border

State	Federal Inspectors	State Inspectors	Total
California	13	55	68
Arizona	30	35	65
New Mexico	7	2.5	9.5
Texas	91	252	343
Total	**141**	**344.5**	**485.5**

SOURCE: Independent Evaluation Panel, based on FMCSA data for staffing levels as of April 2008.

FMCSA and the four border states had 485 safety inspection personnel assigned to the U.S.-Mexico border. This staff inspected drivers and vehicles for both the demonstration project and commercial zone carriers. About 29 percent of the safety inspectors were federal staff, and the remaining 71 percent were state staff. Texas, which handles more than two-thirds of the annual truck crossings into the United States from Mexico, had 343, or about 71 percent, of the total safety inspectors at the border.

Considering the Department's announcement to extend the demonstration project and the stated objective to increase the number of Mexico-domiciled carriers participating in the project, it is important for the Department to monitor the adequacy of its staffing, inspection equipment, and other resource needs for the demonstration project. The Department should determine whether it needs to augment its inspection capability, equipment, or other support resources to accommodate the expected increase in the number of project participant carriers. If the Department's goal of increased participation is achieved, it would be critical to examine the level of resources needed to ensure that Mexican carriers and drivers engaged in long-haul operations comply with U.S. safety rules.

III. MATTERS FOR THE DEPARTMENT'S CONSIDERATION

On the basis of our review of the first 12 months of the Department's cross-border demonstration project, we present the following observations and trust that they will be useful as you consider the effectiveness of the project:

1. To accurately assess the safety performance of carriers in the demonstration project, FMCSA would need a larger sample of Mexican carriers than the 27 current participants. The agency could start with the 38 additional carriers that successfully passed the safety audits but because of lack of insurance were not granted OP-1 operating authority—if those carriers still have an interest in participating. If all these additional carriers secured the necessary insurance and were granted OP-1 authority, the total number of Mexico-domiciled carriers would be 65 and the total number of trucks would be about 300. The agency would have better statistical results with a larger sample size.

2. We observed that the mechanism for checking the 27 participant carriers and their 101 trucks is more stringent than what is in place for about 860 carriers and their 1,700 trucks that have "grandfathered" status or certificates of registration to operate in specific states beyond the commercial zone. We strongly urge FMCSA to extend similar inspection procedures and rigor to the other carriers that have long-haul operating authority and travel beyond the commercial zone. FMCSA informed the Panel that it intends to develop a more strategic enforcement focus for its inspection procedures in conjunction with the compliance review process established for Mexican carriers operating in the United States.

3. The existence of three operating authorities with varying safety requirements for Mexico-domiciled carriers offers an opportunity for the Department to bring Mexican carriers currently operating beyond the commercial zone in the United States under a single safety umbrella. A combined safety program for Mexican carriers with long-haul authority would enable FMCSA to better monitor and identify the unsafe carriers within these groups so that the carriers could improve their operations or FMCSA could put them out of service. Such a program would also streamline FMCSA's safety oversight process, allowing the agency to focus its resources on expanding the number of compliance reviews it conducts on Mexican carriers with poor safety records. The Panel recognizes that certain safety features of the current demonstration project, such as a pre-condition PASA, would not be applicable to the grandfathered and certificated Mexican carriers, although a vigorous program of compliance reviews could be a substitute. However, other features, such as a special suffix next to the USDOT number for easy identification of trucks when they operate beyond the border zone and the every-truck-every-time checks at the border, could be applicable to

these long-haul carriers. FMCSA has committed to take the necessary steps to ensure these carriers have a unique identifier added to their existing USDOT number.

4. With regard to the PASA, because FMCSA said it did not properly articulate its intent with respect to use of the 11 safety regulations, we urge the agency to correctly state in a Federal Register notice how it plans to incorporate these regulations into the PASA. Using these 11 safety regulations (or whatever critical elements emerge in the New Entrant Rule) as pass-fail eligibility criteria in the PASA would improve the agency's ability to identify unsafe Mexican carriers and ensure that deficient basic safety-management procedures are corrected before carriers are granted long-haul operating authority.

5. FMCSA equipped 73 of the 101 Mexican participant trucks with GPS tracking devices, and we believe that these devices are an important safety control. As the devices are mounted on all the remaining project trucks, FMCSA should require more accurate and specific vehicle location and destination data from the database behind the tracking system. These data would allow the agency to improve its monitoring of project trucks when they operate beyond the border zone.

6. FMCSA did not report any insurance-related problems to the Panel other than the one carrier that allowed its insurance to lapse. Our interviews of the five insurance companies insuring the 29 demonstration project carriers did not indicate any further problems. However, FMCSA needs a more effective monitoring system to stop carriers who operate without the required insurance and operating authority before they enter the United States.

7. Considering the Department's announcement to extend the demonstration project and the stated objective to increase the number of Mexico-domiciled carriers participating in the project, it is important for the Department to monitor the adequacy of its staffing, inspection equipment, and other resource needs for the demonstration project. The Department should determine whether it needs to augment its inspection capability, equipment, or other support resources to accommodate the expected increase in the number of project participant carriers.

Madam Secretary, we submit this report for your consideration.

The Independent Evaluation Panel

U.S.-Mexico Cross-Border Trucking Demonstration Project

October 31, 2008

IV. APPENDIXES

Appendix A. Evaluation Approach: Resources, Staffing, and Independence

We conducted this evaluation from September 2007 through September 2008. Our primary goal was to achieve the specific requirements in Public Law 110-28, Section 6901, and the FMCSA notice published June 8, 2007, in the Federal Register. We performed activities that we determined were critical to allow us to gather and analyze the relevant information given the available time and resources.

Our evaluation included assessment of data and documentation from various sources. We interviewed Mexican officials, USDOT officials, FMCSA staff at the U.S.-Mexico border-crossing facilities, state safety enforcement officials, U.S. insurance companies, and staff at U.S. and Mexican drug- and alcohol-collection sites. We had periodic meetings with the USDOT Office of Inspector General (OIG), which was conducting a parallel review. We felt our meetings with the OIG staff were useful.

After our Panel was established, USDOT assigned the Transportation Safety Institute (TSI) within the Department's Research and Innovative Technology Administration (RITA) to manage the contract, provide logistical support, and be the liaison between the Panel and the Department. Ms. Sarah Musler performed this role at TSI for the Panel. She was supported by TSI technical and administrative staff.

We, the three panelists, served in a pro bono capacity. We received no compensation for serving on the Panel. The Department paid for our travel to and from Mexico to observe the safety audits and for local travel related to the project.

TSI retained Felix Ammah-Tagoe, Ph.D., and his company, E-Ternational Research Consulting, to assist us in this evaluation. E-Ternational in turn collaborated with URC Enterprises, Inc., to allow it to retain the services of Dr. Santokh Singh, a senior statistician; Stephen Pelletier, a senior technical writer; and Shana Johnson, a research associate. Working through TSI, we retained technical contracting services for truck inspections at the border-crossing facilities and for reviews of drug-collection sites.

We performed all our reviews independent of the Department, and we conducted a thorough, impartial, and fair evaluation. All the observations and conclusions we make are entirely ours.

Appendix B. Adequacy of Sample Size

The adequacy of a sample size depends on the purpose for which the sample is to be used. In evaluating the safety provisions of the U.S.-Mexico Cross-Border Trucking Demonstration Project, the Panel had to compare Mexico-domiciled carriers with a control group composed of U.S.-domiciled carriers on the basis of key safety factors, such as driver violations, vehicle violations, and out-of-service (OOS) performance. This analysis had to be based on samples of carriers from the two groups rather than the two populations from which the samples were drawn. Thus, determining an adequate sample size is crucial in assessing how the two carrier groups (Mexican group and U.S. group) might differ with respect to statistical proportions, such as the relative numbers of driver violations.

The Panel used the safety data FMCSA provided from its MCMIS database to achieve two objectives:

1. Estimate proportions (or percentages) of carriers' relative levels of safety performance in each of the two groups.
2. Confirm whether the two groups differ in select safety indicators—such as driver OOS, driver violations, vehicle OOS, and vehicle violations—and if they differ, how they might differ.

In both of these objectives, establishing the statistical validity of the results is important because conclusions, though based on a sample, have to be extrapolated to represent the entire underlying population. In estimating proportions—our first objective—it is important to demonstrate that a given estimated proportion is representative of the entire sampled group with 95 percent certainty. The point of the second objective is to determine whether to accept or reject the hypothesis that the proportions for the two groups are different. Here, establishing the statistical significance of the sample-based results helps in drawing conclusions with confidence. To achieve these statistical goals, one needs in advance a rough idea about the population proportion, the level of confidence one wishes to have in an estimate (for example, 95 percent), and the power of the statistical test. Because USDOT provided no prior estimates of proportion for Mexican carriers or comparative proportions for the two groups for the purpose of determining the safety impacts of the project, the Panel made certain statistical assumptions in order to achieve the above objectives.

In calculating the sample size for the two goals, the Panel considered in Objective 1 several assumed values of proportion for the Mexican group, and in Objective 2 several values of the proportions of the Mexican group and U.S. group. Additionally, the Panel analyzed other key parameters required to determine the sample size, such as the size of the populations (Mexican and U.S.) from which the samples are drawn, a statistically

reasonable confidence level (95 percent), and the margins of error (3 percent or 5 percent).

Assumed Statistical Thresholds

Objective 1. On a purely statistical basis, the number of Mexican carriers required for an adequate sample size from the nearly 700 carriers that applied for the OP-1 project depends on the assumed value of the population proportion.

Table B-1 and Table B-2 present the sample-size thresholds for estimating proportions for the Mexican carriers under the following assumptions:

- Population size (700), representing the number of Mexican carriers that applied for the OP-1 project
- Confidence level (95 percent)
- Margin of error (3 percent *or* 5 percent)

The estimates in Table B-1 and Table B-2 show that:

- If the assumed proportion is very low (on the order of 0.05) and we want to be 95 percent confident that the estimated proportion is close to the actual proportion of Mexican driver violations with a 3 percent margin of error, then the required sample size should be at least 157 carriers.
- If the assumed proportion is very low (on the order of 0.05) and we want to be 95 percent confident that the estimated proportion is close to the actual proportion of Mexican driver violations with a 5 percent margin of error, then the required sample size should be at least 66 carriers.

Table B-1. Sample Size Needed to Estimate Proportion of Driver Violations for the Group of Mexican Carriers, with 3 Percent Margin of Error

Population size	Z-value (based on 95% confidence level)	Prior assumption about the population proportion	Margin of error	Sample size
700	1.96	0.05	0.03	157
700	1.96	0.1	0.03	248
700	1.96	0.15	0.03	306
700	1.96	0.2	0.03	346
700	1.96	0.25	0.03	374
700	1.96	0.5	0.03	423

SOURCE: Independent Evaluation Staff, June 2008.

Table B-2. Sample Size Needed to Estimate Proportion of Driver Violations for the Group of Mexican Carriers, with 5 Percent Margin of Error

Population size	Z-value (based on 95% confidence level)	Prior assumption about the population proportion	Margin of error	Sample size
700	1.96	0.05	0.05	66
700	1.96	0.1	0.05	116
700	1.96	0.15	0.05	153
700	1.96	0.2	0.05	182
700	1.96	0.25	0.05	204
700	1.96	0.5	0.05	248

SOURCE: Independent Evaluation Staff, June 2008.

Objective 2. To determine the sample size for the second objective of testing the claim that the proportions of the two groups are really different, the Panel assumed several values of the proportions. This is important so that the decision to reject or not reject the claim of no difference is made at the 95 percent confidence level. Table B-3 shows sample sizes for a variety of assumed proportions for the two populations being compared.

Table B-3. Sample Size Needed to Confirm Whether the Proportion of Driver Violations for the Mexican Carriers (P1) Differs Significantly from That of the U.S. Carriers (P2), with 95 Percent Confidence Level

Prior assumption about the population 1 proportion	Prior assumption about the population 2 proportion	Absolute difference	Sample size from each population
0.05	0.1	0.05	474
0.1	0.2	0.1	218
0.15	0.3	0.15	133
0.25	0.375	0.125	230

SOURCE: Independent Evaluation Staff, June 2008.

In summary, to obtain an adequate sample of Mexican carriers, FMCSA needs to revisit all the applications that the agency previously did not consider for the project, review the application materials, and determine if it is possible to increase the number of participants. If FMCSA had met its original target of granting provisional long-haul authority to 100 Mexican carriers, then the agency would have had an adequate sample for a 95 percent confidence level with a 5 percent margin of error.

Appendix C. Summary of Statistical Analysis Performed for This Report

The statistical methods used in this report focused on the following three issues:

1. Assess Representativeness of the Participants' Organizational Characteristics

Methodology: We analyzed carriers' organizational characteristics. The analysis compared the types of business organizations (such as sole proprietorship, partnership, and corporation) in the group of 27 carriers participating in the project with the types of business organizations in the other carrier groups (the universe of applicant carriers, carriers that failed the PASA, carriers whose applications were dismissed, and carriers that failed vetting). We also compared the proportion of a characteristic (such as number of reported trucks and drivers) in the project participants group with the proportion of that characteristic in each of the other groups.

We used a representative index (ratio of two proportions) for these comparisons. We measured representativeness by the deviation of this index value away from 0.0. A value greater than or equal to 0.0 indicates satisfactory representativeness and a value less than 0.0 indicates poor representativeness.

2. Assess Adequacy of Sample

Methodology: We analyzed the number of the participant carriers relative to the applicant carriers to determine the minimum sample size that would be needed from the pool of applicant carriers. Our analysis was based on the following:

- The size of the population from which a sample has to be drawn. We assumed a universe of 700 carriers based on the number of applications FMCSA received from interested carriers.
- The value of the population proportion that needs to be estimated precisely from the sample.
- The margin of error that is acceptable for the sample estimate.
- The confidence level that is preferred for the sample so that it can provide estimates within the given margin of error.

3. Confirm If the OOS Rates for the Participant Carriers Are Statistically Different from Those of Other Groups, Such as Commercial Zone and Grandfathered Carriers

Methodology: To compare the group of demonstration project participants with other groups (considered one at a time) with respect to OOS rates for both drivers and

vehicles, we used standard Z-statistic. We started each analysis by claiming that the proportion (p1), or OOS rate, for the project participants group is smaller than that of the other group (p2). We accepted the claim as valid based on the p-value. A p-value < 0.05 is indicative of sufficient statistical evidence in favor of the claim $p1<p2$, while a p-value > 0.5 goes against the claim.

Appendix D. History of Legal Authority for Mexican Carriers Operating Beyond the U.S. Border Commercial Zone

Prior to 1982. The Interstate Commerce Commission (ICC) issued operating authority to for-hire Mexico-domiciled (MX) carriers to serve points in the United States under the agency's jurisdiction. Private carriers and for-hire carriers providing exempt transportation (including those operating within border commercial zones) were not required to obtain operating authority to provide such service.

1982. Bus Regulatory Reform Act of 1982 (Section 6) imposed moratorium on issuance of new operating authority for regulated for-hire MX carriers. MX carriers already legally operating in the U.S. were not affected.

1984. Motor Carrier Safety Act of 1984:

- Extended 1982 moratorium (Section 225).
- Required previously unregulated MX for-hire carriers of exempt commodities and MX private carriers to obtain annually a new "certificate of registration" (CR) to provide service in the United States (Section 226).

1985. ICC adopted final rule implementing Section 226 of the Motor Carrier Safety Act of 1984.

- MX for-hire carriers of *exempt* commodities and MX private carriers must obtain a CR to operate in United States by filing form OP-2.
  - Mexican-owned or controlled MX carriers are restricted to the border commercial zones.
  - U.S.-owned or controlled MX carriers are *not* limited to the border commercial zones.
- MX for-hire carriers of *nonexempt* commodities may continue to operate in border commercial zones without a CR. Operations beyond the zones may continue only if the carrier held operating authority prior to the 1982 moratorium.

1988. Truck and Bus Safety and Regulatory Reform Act of 1988 (Section 9111(g), codified at 49 U.S.C. 10922):

- Extended moratorium for four more years.

- Required MX carriers transporting nonexempt commodities to obtain a CR in order to operate within the border commercial zones.
- Eliminated requirement to renew CRs annually.
- Redefined foreign motor carrier (and extended CR requirement) to include anyone providing transportation under lease arrangements with U.S. motor carriers or shippers.

1989. ICC adopted final rule implementing Section 9111(g) of 1988 Truck and Bus Safety and Regulatory Reform Act, effective January 1, 1990.

- Notice of Proposed Rulemaking (NPRM) interpreted Section 9111(g)(5)(B) as not permitting U.S.-owned or controlled MX carriers to transport nonexempt commodities beyond the border commercial zones under a CR (in order to be consistent with the moratorium).
- NPRM reaffirmed that U.S.-owned or controlled MX for-hire carriers transporting exempt commodities and U.S.-owned or controlled MX private carriers may be granted CRs authorizing nationwide service.

1995. ICC Termination Act repeals former Section 10922 and recodifies moratorium in 49 USC 13902(c).

- Nothing in act affects operations in border commercial zones until President lifts moratorium.

March 2002. Interim Final Rules implementing North American Free Trade Agreement (NAFTA).

- Established separate requirements for MX carriers (regardless of ownership) based on geographical scope of proposed operations.
- MX carriers must file OP-1(MX) in order to operate beyond border commercial zones, even if they are U.S.-owned and have a CR permitting operations beyond the zones.
- Existing CRs permitting operations beyond border zones remain in effect provided carrier files OP-1(MX) by November 2003.
- Carrier can continue to operate beyond border zone under CR until FMCSA takes action on OP-1(MX).
- Carriers intending to operate exclusively within border zones must file OP-2.

December 2002. President lifts moratorium.

SOURCE: Federal Motor Carrier Safety Administration, September 2008.

Appendix E. FMCSA Policy Memoranda on English-Language and Road-Sign Tests

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

Memorandum

Subject: **ACTION**: 49 CFR Section 391.11(b)(2)
English Language Proficiency

Date: FEB - 1 2008

From: William A. Quade
Associate Administrator for Enforcement
and Program Delivery

Reply to
Attn. of: MC-ESB

To: Assistant Administrator and Chief Safety Officer
Associate Administrator for Field Operations
MC-E Office Directors/Division Chiefs
Office of Chief Counsel, Enforcement and Litigation
Field Administrators/Service Center Directors
Division Administrators/State Director
National Enforcement Team
National Training Center

PURPOSE

This policy memorandum supplements the previously issued policy concerning enforcement of Section 391.11(b)(2) regarding English language proficiency. This policy incorporates an assessment of a driver's ability to understand common United States (U.S.) highway traffic signs.

BACKGROUND

On July 20, 2007, the Acting Associate Administrator for Enforcement and Program Delivery issued a policy memorandum titled, "Placing Drivers Out of Service for Violating 49 CFR Section 391.11(b)(2) English Language Proficiency," Policy Number MC-ECE-0005-007. The policy provided guidance and an assessment tool to confirm a driver's ability to communicate in English sufficiently to understand and respond to official inquiries and directions. It did not confirm a driver's understanding of U.S. highway signs.

POLICY

A driver's ability to understand U.S. highway traffic signs will be confirmed following the driver interview.

Determining a Driver's Ability to Understand Highway Traffic Signs

Inspectors should take the following steps to assess the driver's ability to understand U.S. highway traffic signs:

1. Explain to the driver that he or she must be able to understand the meaning of U.S. highway signs.
2. The inspector will randomly select four signs from the attached list of signs.
3. The inspector will ask the driver to explain the meaning of the four selected highway signs. (Note: The driver's explanation may be in any language, provided the inspector is able to understand the driver's explanation.)
4. Failure to satisfactorily explain the meaning of at least three of the four signs will result in a violation of section 391.11(b)(2).

When an inspector determines a driver is not able to understand U.S. highway traffic signs:

The inspector will be required to cite the violation of 391.11(b)(2), and **manually amend** the violation description as follows:

- Select the base violation 391.11(b)(2);
- Amend the violation description to read: "Driver must be able to understand highway traffic signs and signals in English language"; and
- **DO NOT** activate the Out-of-Service designation.

The ASPEN inspection software will be modified in March 2008 and updated with the following citation: *391.11(b)(2)S – Driver must be able to understand highway traffic signs and signals in the English language*. Until this violation is programmed in ASPEN, inspectors should follow the guidance above.

APPLICABILITY

This policy applies to all interstate drivers operating in the U.S.

EFFECTIVE DATE

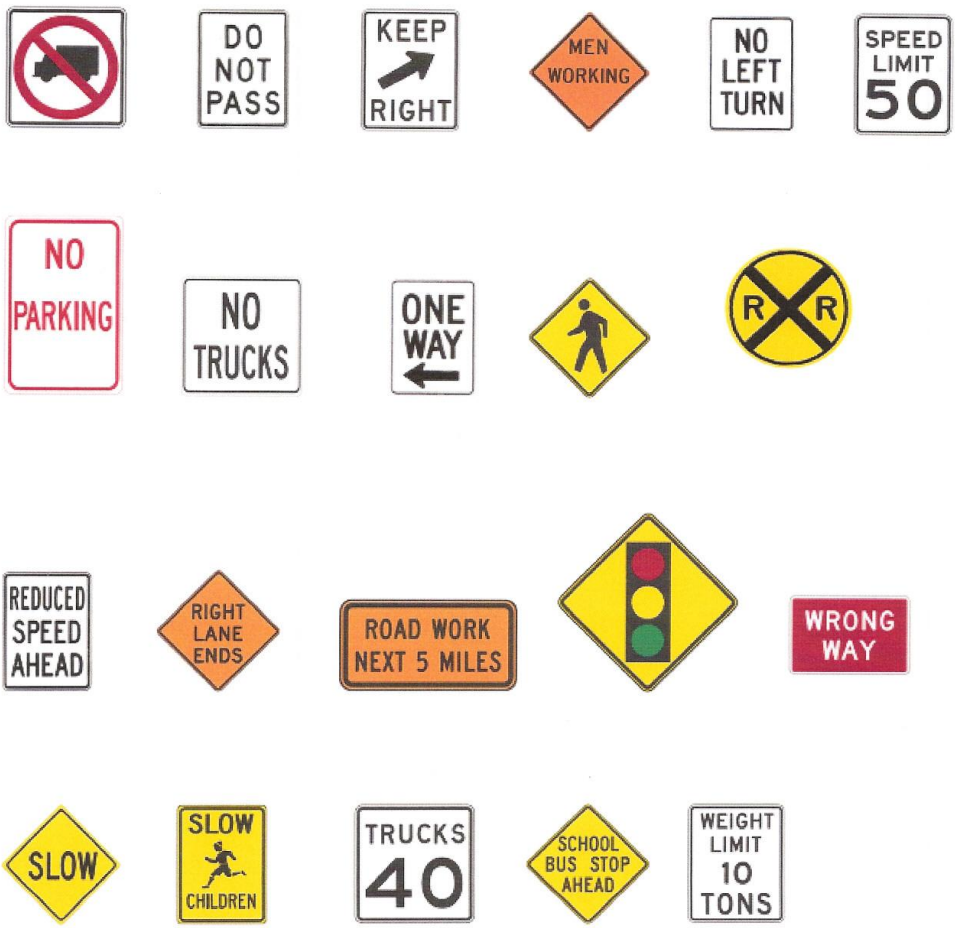
All Federal inspectors will begin implementing this policy immediately for all commercial vehicle drivers entering the U.S. from Mexico. Additionally, the policy will be implemented for all other commercial vehicle drivers operating in the U.S. when the inspector determines the driver's ability to understand U.S. highway traffic signs may be limited.

State inspectors should also be encouraged to implement this policy. However, the decision to implement by State inspectors will be at the discretion of the State agency.

The Federal Motor Carrier Safety Administration is working with the Commercial Vehicle Safety Alliance to develop a comprehensive policy on 49 CFR 391.11(b)(2). Once developed, the policy will provide uniform enforcement by Federal and State inspectors.

If you have any questions or comments regarding this document, please contact the Enforcement and Compliance Division at 202-366-9699.

Attachment


DO NOT PASS
KEEP RIGHT
MEN WORKING
NO LEFT TURN
SPEED LIMIT 50
NO PARKING
NO TRUCKS
ONE WAY
R R
REDUCED SPEED AHEAD
RIGHT LANE ENDS
ROAD WORK NEXT 5 MILES
WRONG WAY
SLOW
SLOW CHILDREN
TRUCKS 40
SCHOOL BUS STOP AHEAD
WEIGHT LIMIT 10 TONS

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

Memorandum

MC-ECE-0005-07

Subject: **ACTION**: Placing Drivers Out of Service for Violating 49 CFR Section 391.11(b)(2) English Language Proficiency

Date: JUL 2 0 2007

From: William A. Quade
Acting Associate Administrator for Enforcement and Program Delivery

Reply to
Attn. of: MC-ECE

To: Assistant Administrator and Chief Safety Officer
Associate Administrator for Field Operations
MC-E Office Directors/Division Chiefs
Office of Chief Counsel, Enforcement and Litigation
Service Center Field Administrators
Division Administrators/State Director
National Enforcement Team
National Training Center

PURPOSE

This policy memorandum provides guidance to Federal Motor Carrier Safety Administration (FMCSA) and enforcement personnel conducting North American Standard Driver/Vehicle Inspections who need to confirm that drivers are able to communicate sufficiently to understand and respond to official inquiries and directions in English as required by 49 CFR Section 391.11(b)(2) and apply appropriate enforcement procedures.

BACKGROUND

Section 391.11(b)(2) of the Federal Motor Carrier Safety Regulations (FMCSR) requires drivers operating commercial motor vehicles (CMV) in interstate commerce to be able to read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records.

On April 26, 1995, the North American Free Trade Agreement, Land Transportation Standards Subcommittee on Commercial Motor Vehicle and Driver Standards and Motor Carrier Compliance agreed to a resolution on language proficiency of commercial motor vehicle drivers as follows:

EFFECTIVE DATE

This memorandum is effective immediately.

The ASPEN software will be updated in the September 2007 release to designate the violation of 49 CFR 391.11(b)(2) as an out-of-service violation.

If you have any questions or comments regarding this document, please contact the Enforcement and Compliance Division at (202) 366-9699.

Attachment

Attachment 1

Strategies for Communication with Non-Native Speakers of English and Examples of Driver Interview Questions

Inspectors should explain in Spanish or other languages commonly used by inspectors in communicating with foreign drivers, that (1) **they must conduct a portion of the road inspection in English, specifically the driver interview**; (2) drivers must respond appropriately in English as a means of establishing their proficiency; and (3) drivers' failure to establish their ability to respond to these basic questions in English will result in an out-of-service violation of section 391.11(b)(2).

The inspector should speak slowly, but naturally. Be mindful not to rush the questions, and paraphrase (in English) as appropriate.

No.	General Driver Interview Questions	Possible Paraphrases
1.	Where did you start your trip today?	"Where are you coming from today?"
2.	Where are you driving to today?	"Where are you going today?"
3.	How long have you been driving today?	"What time did you start today?" and "What time are you planning to stop driving today?"
4.	What are you "hauling" today?	"What's in your truck/trailer?" or "What cargo do you have in your truck/trailer?"
5.	Who are you driving for today?	"Who are you working for?" or "Who is paying you for the load?" or "What is the name of your employer?"
6.	What is the telephone number for the trucking company you are driving for today?	"What telephone number would you call if you had a problem today?" or "What telephone number at the company would you call if you had an accident today?"
7.	Show me your driver's license please	"Show me your CDL"
8.	Show me the proof of insurance for your vehicles (If applicable)	"Where is your insurance card?"

9.	Show me the registration for your vehicle(s)	"Where is your cab card?" or "Where is your IRP cab card?"
10	What year was your truck manufactured?	"What is the year of your truck?" or "What year was your truck made?"
11.	Did you perform your pre-trip inspection before you started driving today?	"Did you do your pre-trip inspection today?"
12.	Do you use time cards or log books?	"How do you report the time you worked?" or "Do you use a time clock at work?"
	Hazardous Material Question (If applicable)	
13.	What hazardous materials do you have on the truck today?	"What hazmat do you have on board today?" or "What hazmat do you have in the truck/trailer?"
14.	What telephone number would you call in case of an emergency?	"What telephone number would you call if you had a problem today?" or "What telephone number at the company would you call if you had an accident today?"

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Appendix F. Observations of Pre-Authority Safety Audits in Mexico

On August 30, 2007, before the initiation of the demonstration project, we three panelists, our staff, and two technical truck inspectors observed two FMCSA Pre-Authority Safety Audits in Tijuana, Mexico. On November 6–7 and December 5–6, 2007, our staff and a technical truck inspector observed two additional PASAs in Tijuana and Chihuahua, Mexico.[50]

During all four safety audits, we observed that FMCSA conducted the PASAs in accordance with FMCSA procedures and regulations. We observed FMCSA efforts to validate the information Mexican carriers provided, including:

- calling third-party substance abuse consortium administrators to review contracts for drug- and alcohol-testing programs and check the rate of testing for compliance with U.S. requirements,
- calling insurance companies to verify coverage and using insurance information in FMCSA databases to check for lapses in coverage,
- using vehicle inspection and repair records and FMCSA databases to determine carriers' involvement in crashes and safety compliance,
- using the FMCSA database on drivers' licenses and having carriers contact Mexican authorities who issue drivers' licenses to verify authenticity of licenses, and
- comparing drivers' logbooks and time sheets to U.S. border inspection records and U.S. and Mexican customs manifests and bills of lading to identify hours-of-service compliance or violation.

During the August 30, 2007, Tijuana safety review, we visited two trucking firms and were impressed with the thoroughness of the FMCSA inspections and the professionalism of the FMCSA inspectors and auditors, both in terms of the paperwork inspections and the actual inspections of trucks. Based on what we observed, we believe it is worthwhile that the United States has all these safety requirements in place.

The first motor carrier we observed in Tijuana was small—it had only three trucks. This firm is a certificated carrier and already had authority to operate as a private carrier (hauling its own goods only) to any point in California, but it wanted operating authority for the other states as well. The second motor carrier had six trucks. This carrier was a certificated carrier with long-haul operating authority to travel beyond the commercial zone. The truck inspection we observed was thorough and, among other problems, this truck had multiple air leaks in its braking system. This truck failed the inspection, and FMCSA told us it would be excluded from trucks in the firm's fleet that would be authorized to enter the United States. During the audit, FMCSA discovered that this second carrier had another problem. The carrier, like the first one, had a certificate of registration for private carriage anywhere in California, but in fact it had been hauling

[50] At both locations, we were joined by SCT officials, who also observed the PASA process.

goods for hire beyond the commercial zones. This was not authorized. This carrier subsequently withdrew its application when it was clear that it would fail the safety audit.

The third motor carrier, observed in November 2007, had four trucks. The carrier passed the PASA and joined the demonstration project six months later, in May 2008. A different FMCSA team—an inspector and an auditor—in our judgment conducted a thorough review, calling both the insurance companies and a third-party drug consortium administrator to verify the coverage and duration of drug-protocol contracts. All four of the carrier's trucks had current Commercial Vehicle Safety Alliance (CVSA) decals because the carrier had an OP-2 operating authority for the commercial zone and the vehicles had been inspected at the border on previous trips into the United States. All the trucks were in good condition—three were less than 8 years old and one was 11 years old.

During this third PASA, we made three important observations:

- First, this particular carrier had a driver who had taken English-language classes as part of a new Mexican government requirement that all drivers with a binational commercial driver's license be proficient in English. SCT officials told us this requirement started in March 2007.
- Second, the carrier had a basic time sheet it used to keep track of drivers' hours of service, and the owner was eager and willing to switch to a more standard driver logbook system. Our further review of PASA documents for other carriers and our fieldwork at the border-crossing facilities suggest that there is an opportunity for joint training by FMCSA and SCT on the correct use of logbooks.
- Third, this carrier's vehicles did not have a *Z* next to the USDOT number to indicate that it had OP-2 authority. The carrier did not seem to know that it was supposed to have a *Z* on all its vehicles that operate in the commercial zone. While this seems to be a simple marking violation, FMCSA needs a more effective means of implementing its *Z* label policy to help distinguish the OP-2 trucks from the OP-1 trucks.

The fourth motor carrier, observed in Chihuahua, Mexico, in December 2007, had four trucks, five trailers, and five drivers. This PASA was instructive because the carrier did not have prior operating authority. Again the FMCSA inspector and auditor conducted a thorough and comprehensive safety audit in accordance with FMCSA rules and requirements. We observed them taking steps to cross-check and verify the information the carrier submitted on insurance, drivers' licenses, hours of service, and drug and alcohol compliance.

Appendix G. Observations of Drug-Collection Protocols in Mexico

In Mexico, the agency in charge of transportation drug policy compliance is the Dirección General de Protección y Medicina Preventiva en el Transporte (DGPMPT), or Department of Protection and Preventive Medicine in Transportation. This agency is an administrative unit within SCT and has responsibility for drug policy compliance for all modes of transportation. The agency has 42 medical units located throughout the country at transportation facilities, including ports of entry, airports, seaports, and SCT facilities. In addition, the agency has 19 mobile medical units that are moved around and used for roadside examinations.

The Panel's independent drug-collection-site evaluators visited three of the permanent sites and one of the mobile sites in August 2008. During these visits, we had several discussions about SCT's drug and alcohol program with senior Mexico officials, including Dr. Jose Valente Aguilar Zinser, the Director General of DGPMPT. Table G-1 shows the locations of the collection sites in Mexico City and near the U.S.-Mexico border that we visited.[51]

Table G-1. Mexican Drug- and Alcohol-Collection Sites in Mexico City and Near the U.S.-Mexico Border

Collection site	Address	Visited by Panel
Mexico City	Medical clinic at Secretaría de Communicaciones y Transportes (SCT) under the Protección y Medicina Preventiva en el Transporte agency Calz. De las Bombas 411 Mexico City, DF04920	Yes
Tijuana, Baja California	Fuerza Aérea Mexicana S/N, Colonia Aeropuerto, C.P. 22300; Tijuana, Baja California	Yes
Mexicali, Baja California	Calle de la Industria 1119, Patios del Ferrocarril, Colinia Nacozari, C.P. (Zip Code) 21040; Mexicali, Baja California	Yes
Nuevo Laredo, Tamaulipas	Avenida Morelos número 1423 entre Francisco I Madero y Héroes de Nacozari, Sector centro	No
Ciudad Juárez, Chihuahua	Avenida Vicente Guerrero número 1815 Colonia Partido Romero	No
Matamoros, Tamaulipas	Avenida tercera número 45, Colonia Fraccionamiento Villa de las flores	No

SOURCE: Independent Evaluation Panel, September 2008.

To determine conformity with 49 CFR 40 during our site visits in Mexico, we focused on site security and integrity, collection procedure, and custody and control of the specimen and medical forms. Below is a summary of our observations.

[51] In July 2007, a USDOT team from FMCSA, OIG, and ODAPC visited two other Mexican collection sites at Nuevo Laredo and Matamoros. We reviewed the ODAPC trip report before selecting the sites to visit.

Site Security and Integrity

The four sites we visited, including the mobile unit, were well secured. The safety and security procedures were highly adequate. At all four sites, there was no opportunity for the donor to have access to an unsecured source of water or to items that could be used to adulterate the specimen.

- **At the mobile unit:** The privacy stall had an unsecured drop-down ceiling panel and a small storage closet that was empty on inspection but was not secured. However, because all collections are observed, the opportunity is eliminated for the donor to attempt to use an appliance or to dilute or adulterate the specimen.
- **At the SCT clinic:** The ceiling was tight. There was bluing in the tankless toilet and no sources or locations where adulterants could be hidden. The water source for the sink is turned off with a key-operated on-off solenoid switch located on the wall next to the entrance to the privacy room. We observed the water being turned off during a live collection. SCT officials told us that the key is always carried by the SCT Physician Director of the Medical Clinic in Mexico City.
- **At Tijuana and Mexicali sites:** The site security and integrity were adequate.

Collection Procedure

All specimen collections conducted by SCT are observed. In all instances, the collector is a physician. The collection is conducted at the conclusion of a routine physical examination to determine whether a driver is fit for duty. SCT officials told us this process is the same for roadside collections in mobile collection facilities and for fixed-base collection sites performing certifications and recertifications.

Specimen Splitting

Mexico's collection process involves the donor splitting the sample into two separate specimens. This is similar to the process in the United States, except that in the United States, 49 CFR 40.71(b) requires the collector rather than the employee separate the urine into two specimens and pour the specimens into the collection bottles.

We directly observed that in Mexico the donor (rather than the collector) poured the urine into the tamper-proof cups sent to the laboratory. SCT officials explained that the donor is allowed to split the sample to demonstrate that the collector has not tampered with the specimen. They indicated there has been no reported incident where the specimen has spilled because the donor split the specimen.

Insufficient Amount of Specimen

In contrast to 49 CFR 40.193, a donor in Mexico who is not able to provide a sufficient specimen is allowed up to four hours to provide a sample. During this period, the donor may drink up to 720 ml (24.35 oz) of fluid. In the United States, 49 CFR 40.193(b)(2) requires that the collector "urge the employee to drink up to 40 ounces of fluid, distributed reasonably through a period of up to three hours." While the Mexican standard of 24.35 ounces of fluid is significantly less than 40 ounces, four hours is a significantly longer specimen-generation period than the three hours prescribed in the United States. We believe this merits further collaboration between USDOT and SCT.

Collection Kit

As specified in 49 CFR 40, Appendix A(3), the collection kit must contain a leak-resistant plastic bag that has two sealable compartments or pouches; one compartment must be large enough to hold two specimen bottles, and the other large enough to hold the custody and control form (CCF) paperwork. To complete the collection, 49 CFR 40.73(a) instructs the collector to place the specimen bottles and copy 1 of the CCF in the appropriate pouches of the plastic bag.

We observed that the collection kit used by SCT consists of a plastic bag with a single compartment into which are placed the two specimen containers; it is then sealed with a bag tag. The Mexico CCF and the urine specimens in a separate bag are placed in the same container and transported to the laboratory by a carrier.

In addition to the single-pocket plastic bag, the SCT kit contains two wide-mouth cups with screw-on tops and temperature strips. In the collections we observed, the donor took one of the cups into the privacy stall and, under the direct observation of an SCT physician, deposited the specimen in the cup. The donor took the sample to the collector, and in the collector's presence, the donor poured a portion of the specimen into the second cup. The collector observed the temperature and urine color, screwed the tops on both cups, dated the bottle seals and had the donor initial them, placed the bottle seals on both cups, and placed both cups into the single-pocket plastic bag, and closed the bag with a bag tag.

At all four sites, we observed that the donor dates and initials the tamper-evident specimen bottle seals while they are still attached to the CCF (i.e., before they seal the specimen bottles). SCT officials explained that they require that the seals be completed on the form because the donor "might break them" when initialing them on the bottles.

We asked whether SCT had considered using the specimen cups and two-pouch specimen bag specified in 49 CFR 40. Mexican SCT officials noted the extra expense of using the two-pouch bags but indicated the DGPMPT will add this cost in the agency's budget for next year.

Custody and Control

We observed that the custody and control procedures for handling specimens were appropriate. Specimen bottle seals were tamper-evident, as required. All four sites we visited had appropriate procedures in place for sealing the specimens and CCFs and placing them into Styrofoam containers for courier delivery to SCT.

SCT uses a CCF modeled after the form specified in 49 CFR 40, with slight modifications. This form is not a Spanish-language version of the U.S. CCF. We noticed SCT has made three changes: 1) SCT has added a question and checkbox in step 2 to indicate evidence of adulteration; 2) rather than a remarks line in step 2, there are short remarks lines for each substep; 3) a new line H has been added in step 1, "Uso de Medicamentos," for listing medications taken by the employee. SCT officials noted that as a standard procedure, the collector asks the donor to identify medications he or she is taking and records them on this line.

Other Aspects of SCT's Collection Protocol

In addition to our discussion of the three primary areas of our review—site security and integrity, collection procedure, and custody and control—SCT officials provided us with additional information that shed light on some of the programmatic aspects of Mexico's transportation drug-compliance program.

- SCT is not able to send urine specimens collected by SCT to a U.S. HHS-certified lab for testing. SCT would like to send specimens collected in Mexico to the U.S. for testing in parallel with testing the specimens at the SCT laboratory.
- On post-crash testing, SCT officials explained that in Mexico, all testing of operators with commercial vehicle licenses is conducted by SCT. When a crash occurs, SCT is notified by the Mexican police. SCT must then dispatch a collection team from one of its locations to the crash site or to the hospital. If the driver is not hospitalized and can be released by the police, the driver is taken to the nearest SCT site for a fitness-for-duty physical examination and a drug and alcohol test. If the driver is hospitalized, the test is conducted at the hospital if feasible or as soon as the driver can be taken to the SCT facility. The SCT official stated that it is often difficult to accomplish post-crash testing in this manner. He stated that in his estimate, SCT does not complete a post-crash drug and alcohol test for about 15 percent of crashes. This is an estimate SCT is hoping to change by expanding the SCT fleet of van-based mobile collection vehicles that could be rapidly deployed to crash collision sites and would greatly improve SCT's ability to conduct post-crash testing.

Appendix H. Statistical Tables

Table H-1. Mexican Motor Carriers Granted OP-1 Authority Under the Cross-Border Demonstration Project: As of August 30, 2008

Entry into project	USDOT No.	Name	Date OP-1 granted	Number of vehicles*	Number of drivers**
1	555188X	Fernando Paez Trevino dba Transportes Olympic	9/6/2007	2	2
2	650383X	Transportes Rafa de Baja California SA de CV	9/19/2007	2	3
3	557972X	Luciano Padilla Martinez dba Transportes Padilla	9/24/2007	3	3
4	1052546X	Servicios Refrigerados Internacionales SA de CV	9/27/2007	5	5
5	710491X	Higienicos y Desechables del Bajio SA de CV	10/1/2007	3	3
6	650155X	GCC Transporte SA de CV	11/9/2007	13	13
8	975522X	Fidepal S de RL de IP y CV	11/30/2007	1	1
9	951134X	Roberto Montemayor Cruz	11/30/2007	2	2
10	1658656X	Transportes Selg SA de CV	12/7/2007	8	5
11	559560X	Ricardo Cesar Martinez Montemayor	12/28/2007	1	4
12	563815X	Jose David Ruvalcaba Adame dba	1/4/2008	1	1
13	1055053X	Maria Del Carmen Lopez	1/10/2008	1	1
14	558189X	Francisca Burgos Vizcarra	2/14/2008	10	12
15	786826X	Noe Basilio Montiel dba M&N de Mexico	2/14/2008	1	5
16	677516X	Alvarez Perez dba Distribuidora Marina El Pescador	2/15/2008	1	1
17	1059694X	Transportes Monteblanco SA de CV	2/27/2008	1	2
18	1142107X	Avomex International SA de CV	2/29/2008	6	6
20	1693389X	Oscar Arturo Grageda Duarte dba Six Bros Transport	4/14/2008	4	4
21	557042X	Luis Eusebio Salgado Esquer dba Transportes Salgado	4/15/2008	5	6
22	556741X	David Klassen Peters	4/15/2008	2	1
23	861744X	Grupo Behr de baja California SA de CV	5/8/2008	4	2
24	1548345X	Maria Isabel Mendivil Velarde	6/5/2008	9	2
25	1296357X	Distribuidora Azteca del Norte SA de CV	6/5/2008	2	2
26	1677817X	Translogistica SA de CV	6/5/2008	2	1
27	711276X	Transportadora Terrestre SA de CV	6/6/2008	10	6
28	654499X	Manuel Encinas Teran	6/9/2008	1	1
29	974841X	Maquinaria Agrícola de Noreste SA de CV	7/17/2008	1	1
		Subtotal of current participant carriers		**101**	**95**
Two carriers that left the project					
7	610385X	Trinity Industries de Mexico S de R L de CV	11/14/2007	16	14
19	559947X	Orlando Nevid Lopez Hernandez dba Productos Alpes	3/4/2008	1	1
		Grand total of all carrier participants		**118**	**110**

*Number of trucks inspected during the safety audit. Carriers may add additional trucks during the project.
**Number of drivers the carrier intends to use in the United States for OP-1.

SOURCE: Independent Evaluation Panel, based on data from Federal Motor Carrier Safety Administration for carriers granted OP-1 authority as of August 2008.

Table H-2. Summary of Roadside Inspections for the 687 Demonstration Project Applicants by Carrier Category: September 7, 2007, to September 6, 2008

Carrier Category	Driver Inspections	Vehicle Inspections
Universe of Applicant Carriers	26,013	17,629
Demonstration Project Carriers	**5,237**	**1,317**
Carriers Failed PASA	185	164
Carrier's Application Dismissed	4,373	3,370
Carriers with Other Status	16,218	12,778

Carrier Category	Driver OOS Inspections	Vehicle OOS Inspections
Universe of Applicant Carriers	351	3,215
Demonstration Project Carriers	**34**	**120**
Carriers Failed PASA	2	35
Carrier's Application Dismissed	93	733
Carriers with Other Status	222	2,327

Carrier Category	Driver OOS Rates	Vehicle OOS Rates
Universe of Applicant Carriers	1.3%	18.2%
Demonstration Project Carriers	**0.6%**	**9.1%**
Carriers Failed PASA	1.1%	21.3%
Carrier's Application Dismissed	2.1%	21.8%
Carriers with Other Status	1.4%	18.2%

SOURCE: Independent Evaluation Panel, based on FMCSA MCMIS data for applicant carriers from September 7, 2007, to September 6, 2008.

Table H-3. Inspections, Out-of-Service Citations, and Violations of Participant Carriers: September 7, 2007, to September 6, 2008

Entry into project	OP-1 carriers	Roadside inspections			OOS inspections		OOS inspections rates (in percentages)	
		Total	Driver	Vehicle	Driver	Vehicle	Driver	Vehicle
1	Transportes Olympic	44	44	39	2	2	4.5	5.1
2	Transportes Padilla	660	655	71	3	14	0.5	19.7
3	Transportes Rafa de Baja California SA de CV	78	72	26	2	3	2.8	11.5
4	Servicios Refrigerados Internacionales SA de CV	385	377	163	0	8	0.0	4.9
5	Higienicos y Desechables del Bajio SA de CV	6	6	4	0	2	0.0	50.0
6	GCC Transporte SA de CV	1,054	1,054	247	3	21	0.3	8.5
8	Fidepal S de RL de IP y CV	8	8	4	0	0	0.0	0.0
9	Roberto Montemayor Cruz	86	86	16	1	0	1.2	0.0
10	Transportes Selg SA de CV	12	12	8	3	3	25.0	37.5
11	Ricardo Cesar Martinez Montemayor	266	266	174	0	7	0.0	4.0
12	Jose David Ruvalcaba Adame dba Madereria Las Lomitas	50	50	6	0	2	0.0	33.3
13	Maria Del Carmen Lopez Armenta dba Distribuidora Hermanos Hayashi	15	15	3	1	0	6.7	0.0
14	Francisca Burgos Vizcarra dba Transportes Francisca Burgos Vizcarra	664	640	167	2	17	0.3	10.2
15	Noe Basilio Montiel dba M&N de Mexico	47	47	5	1	0	2.1	0.0
16	Alvarez Perez dba Distribuidora Marina	12	12	3	0	1	0.0	33.3
17	Transportes Monteblanco SA de CV	60	60	7	0	2	0.0	28.6
18	Avomex International SA de CV	1,034	1,034	169	3	10	0.3	5.9
20	Oscar Arturo Grageda Duarte dba Six Bros Transport	28	28	20	3	3	10.7	15.0
21	Luis Eusebio Salgado Esquer dba Transportes Salgado	748	725	149	4	16	0.6	10.7
22	David Klassen Peters	12	12	10	1	5	8.3	50.0
23	Grupo Behr de baja California SA de CV	209	208	17	0	1	0.0	5.9
24	Maria Isabel Mendivil Velarde	15	15	14	4	3	26.7	21.4

(Continued on following page.)

Table H-3. Inspections, Out-of-Service Citations, and Violations of Participant Carriers: September 7, 2007, to September 6, 2008 (*continued*)

Entry into project	OP-1 carriers	Roadside inspections			OOS inspections		OOS inspections rates (in percentages)	
		Total	Driver	Vehicle	Driver	Vehicle	Driver	Vehicle
25	Distribuidora Azteca del Norte SA de CV	2	2	2	1	1	50.0	50.0
26	Translogistica SA de CV							
27	Transportadora Terrestre SA de CV	1	1	1	0	0	0.0	0.0
28	Manuel Encinas Teran	24	24	4	0	0	0.0	0.0
29	Maquinaria Agrícola de Noreste SA de CV							
	Subtotal	**5,520**	**5,453**	**1,329**	**34**	**121**	**0.6**	**9.1**
	Two carriers that left the project							
7	Trinity Industries de Mexico S de R L de CV	1,477	1,452	661	3	72	0.2	10.9
19	Orlando Nevid Lopez Hernandez dba Productos Alpes	51	51	3	0	0	0.0	0.0
	Grand Total	**7,048**	**6,956**	**1,993**	**37**	**193**	**0.5**	**9.7**

SOURCE: Independent Evaluation Panel, based on FMCSA MCMIS data for applicant carriers from September 7, 2007, to September 6, 2008.

Table H-4. Incoming Truck Crossings at United States–Mexico Border: 2002–2007

Port name	2002	2003	2004	2005	2006	2007
Arizona, Total	**311,907**	**313,250**	**323,196**	**346,444**	**368,490**	**370,106**
Douglas, AZ	24,362	26,122	28,146	28,418	27,951	26,718
Lukeville, AZ	1,552	821	636	944	654	481
Naco, AZ	4,078	3,643	5,131	4,452	4,052	4,628
Nogales, AZ	242,237	243,365	247,553	266,233	289,590	295,267
San Luis, AZ	37,671	37,975	41,184	45,898	45,851	42,716
Sasabe, AZ	2,007	1,324	546	499	392	296
California, Total	**1,067,411**	**1,019,908**	**1,110,758**	**1,122,784**	**1,131,483**	**1,139,911**
Andrade, CA	2,075	2,253	2,697	2,733	1,279	478
Calexico, CA*	NA	NA	NA	NA	NA	NA
Calexico East, CA	276,390	261,140	312,227	320,212	307,291	323,348
Otay Mesa/San Ysidro, CA	731,291	697,152	726,164	730,253	749,472	738,765
Tecate, CA	57,655	59,363	69,670	69,586	73,441	77,320
New Mexico, Total	**32,603**	**33,263**	**33,716**	**38,664**	**42,231**	**45,962**
Columbus, NM	4,652	4,589	4,531	4,588	5,326	5,695
Santa Teresa, NM	27,951	28,674	29,185	34,076	36,905	40,267
Texas, Total	**3,014,672**	**2,871,624**	**3,036,018**	**3,168,005**	**3,217,475**	**3,326,521**
Brownsville, TX	248,869	229,389	226,289	234,640	243,116	239,023
Del Rio, TX	72,039	65,609	64,061	64,075	65,487	63,460
Eagle Pass, TX	89,856	88,272	100,100	97,729	97,567	100,227
El Paso, TX	705,199	659,614	719,545	740,654	744,951	782,936
Fabens, TX	NA	NA	NA	NA	NA	NA
Hidalgo, TX	390,282	406,064	454,351	491,077	457,825	486,756
Laredo, TX	1,441,653	1,354,229	1,391,850	1,455,607	1,518,989	1,563,836
Presidio, TX	6,605	5,720	7,433	5,763	6,306	7,158
Progreso, TX	23,886	19,571	23,064	23,807	31,533	40,796
Rio Grande City, TX	26,330	35,523	40,815	46,308	43,199	34,263
Roma, TX	9,953	7,633	8,510	8,345	8,502	8,066
U.S.-Mexico Border Total	**4,426,593**	**4,238,045**	**4,503,688**	**4,675,897**	**4,759,679**	**4,882,500**

NA: Data are not applicable or are unavailable.

Data represent the number of truck crossings, not the number of unique vehicles, and include both loaded and unloaded trucks.

*Data for the port of Calexico are typically reported as a combined total with Calexico East.

SOURCE: U.S. Department of Transportation, Research and Innovative Technology Administration, Bureau of Transportation Statistics, based on data from the Department of Homeland Security, U.S. Customs and Border Protection, Office of Management Reporting, *Data Warehouse CD-ROM* (December 1994–December 2007) as of September 4, 2008.

Table H-5. Sample Comments from Panel's Independent Observation of Inspections by FMCSA and State Personnel at Select Border Crossings

Demonstration Project Trucks (OP-1)

6/17/2008 10:45 AM Laredo, TX World Trade Bridge

This vehicle was being operated by team drivers (co-drivers). U.S. Customs will only let one driver enter the customs facility. The co-driver must get off the truck and meet the driver outside the customs facility once the vehicle has cleared customs and enters the U.S. Therefore there was another driver on this vehicle whose credentials (log book, license, etc.) the FMCSA inspectors could not examine.

6/18/2008 11:30 AM Laredo, TX Columbia Bridge

The same driver and vehicle pass through the Columbia bridge inspection site approximately twice a week. The carrier transports sheetrock to locations within the State of Texas. The vehicle had current CVSA decals affixed to both tractor and trailer.

8/6/2008 9:16 AM Santa Teresa, NM

Santa Teresa is approximately one-quarter mile north of the border crossing site inside the New Mexico DPS facility. This is different than other locations requiring the staff to watch vehicles bypassing the location. One staff member is on duty inside the border crossing area to continually monitor the traffic and to assist in selecting non-OP1 carriers for selection. All OP1 carriers are inspected. This location has the highest OP1 carrier traffic primarily due to one carrier that has multiple vehicles and crossings each day. Both FMCSA staff and New Mexico state DPS inspectors are stationed at this facility. The multi-agency staff has an excellent working relationship with each other and the industry.

8/6/2008 9:00 AM World Trade Bridge Laredo, Texas

The "CVSA Inspection Decal Compliance Check" was quick and thorough. The driver had all the documents requested at his fingertips and was able to answer all questions with no difficulty. The vehicle was not equipped with GPS. The driver was able to describe the route he was going to follow to Arizona from memory without reviewing his notes. Once the driver was cleared to proceed, the inspector immediately prepared an email to the FMCSA Division Office in Austin giving them all the particulars, including the identification of the vehicle, its cargo and route to destination.

8/12/2008 11:25 AM Otay Mesa, CA

The vehicle was one of four vehicles belonging to the same company that came across the scales at the same time on this day. The driver was en route to Los Angeles, California. His vehicle was equipped with a GPS satellite tracking system. I noticed that the driver had difficulty communicating with the inspector in English when she was questioning him about his records of duty status. She communicated with the driver primarily in Spanish throughout the inspection.

8/14/2008 11:15 AM Calexico, California

This was a level III inspection performed by an FMCSA inspector. He conducted the English proficiency test but communicated with the driver the majority of the time in Spanish. The inspector was able to verify the validity of the vehicle registration, motor carrier authority, driver's license, and insurance information online from his computer using a program call "query central."

Border Commercial Zone Trucks (OP-2)

6/9/2008 4:02 PM San Luis, AZ

Excellent communication skills with other team members. Inspectors check sign verification and additionally conduct interview in English. The driver failed the English Proficiency Test. The San Luis station has both the inspector and the supervisor verify that driver failed test. I observed the test and concurred that the driver was unable to speak [or] understand English. The Inspector completed a Level II inspection (Level 1 was cancelled for safety purposes). The inspector gave directions to the driver in Spanish. Driver was placed Out of Service.

8/7/2008 10:30 AM Colombia Bridge Laredo, Texas

I asked the inspector to check query central for the inspection history on the driver and vehicle and found that this driver had been inspected 6 times over the last six months and the tractor/trailer had been inspected 8 times for the same period. The last Level I inspection of this vehicle was done by the Texas DPS on April 24, 2008. The violations cited then were not the same ones reported on this inspection.

8/7/2008 2:20 PM Nogales, AZ

Driver stated his spoken English was not very good but, for practice, requested the inspection be conducted in English. The inspector obliged but reverted to Spanish at the point where the driver could no longer respond to English.

8/12/2008 1:38 PM Progreso

FMCSA will not allow vehicles to proceed without the correct documentation of insurance. There have been several instances of fraudulent insurance forms from an insurance provider. That insurance carrier, working with Texas DPS and FMCSA, has provided a listing of all valid insurance policy numbers. If a Mexican carrier produces proof of insurance from that insurance carrier and the policy number is not on the list, FMCSA will not accept it and require the trucking company to provide proof of a valid insurance carrier.

8/14/2008 10:45 AM Calexico, California

This vehicle was equipped with the Qualcomm GPS equipment and it was working properly. In reviewing the driver's records of duty status, it was noted that the driver was not operating outside the commercial zone. The driver indicated that he made one trip into Los Angeles in July, but he primarily operates between Tecate, Mexico, and Calexico, California.

SOURCE: Independent Evaluation Panel, September 2008.

Table H-6. Determining the Universe for Representativeness and Safety Analysis

	Original from FMCSA	Hazmat carriers from OIG list[1]	Passenger carriers from OIG list[1]	Manual match with OIG list[1]	Universe for represen-tativeness	Safety analysis universe
Total Applicants	**778**	21	12	48	687	687
A. Considered by FMCSA for OP-1 project (complete applications, vetted, non-hazmat, etc.)	**330**					
1. Have USDOT # and inspection/safety records	286	3			283	283
2. Does not have USDOT # and inspection/safety records	44			28	28	28
B. Not considered by FMCSA for OP-1 project (incomplete applications, failed vetting, dismissed, withdrew, etc.)	**323**					
1. Have USDOT # and inspection/safety records	278	9	6		263	263
2. Does not have USDOT # and inspection/safety records	45			8	8	8
C. Determined not eligible by FMCSA for OP-1 project (vetting, hazmat and passenger carriers, incomplete applications, withdrew, etc.)	**125**					
1. Have USDOT # and inspection/safety records	105	9	3		93	93
2. Does not have USDOT # and inspection/safety records	20		3	12	12	12

[1] These data are based on information the Office of Inspector General compiled from the applications Mexican carriers submitted to FMCSA for long-haul operating authority.
SOURCE: Independent Evaluation Panel, September 2008.

Table H-7. Organizational Characteristics of OP-1 and Applicant Carriers

	BUSINESS ORGANIZATION TYPE				
Carrier Category	Missing Data	Sole Proprietor-ship	Partnership	Corporation	Total
Universe of applicant carriers	74	250	125	238	687
Carriers in demo project	0	14	0	13	27
Carriers failed PASA	4	14	2	12	32
Carriers' application dismissed	33	65	101	92	291
Carriers with other status	37	157	22	121	337

	NUMBER OF DRIVERS						
Carrier Category	Missing Data	Number of Drivers 1	Number of Drivers 2	Number of Drivers 3	Number of Drivers 4	Number of Drivers 5 and above	Total
Universe of applicant carriers	190	229	101	50	35	82	687
Carriers in demo project	0	8	6	3	2	8	27
Carriers failed PASA	6	14	5	4	1	2	32
Carriers' application dismissed	107	91	43	18	11	21	291
Carriers with other status	77	116	47	25	21	51	337

	POWER UNITS USED						
Carrier Category	Missing Data	Power Units Used 1 to 6	Power Units Used 7 to 11	Power Units Used 12 to 17	Power Units Used 18 to 23	Power Units Used 24 or more	Total
Universe of applicant carriers	186	449	33	7	1	11	687
Carriers in demo project	0	22	4	1	0	0	27
Carriers failed PASA	6	25	0	1	0	0	32
Carriers' application dismissed	104	177	6	3	0	1	291
Carriers with other status	76	225	23	2	1	10	337

	NUMBER OF TRAILERS						
Carrier Category	Missing Data	Own no Trailer	Own Trailer 1 to 6	Own Trailer 7 to 11	Own Trailer 12 to 17	Own Trailer 18 or more	Total
Universe of applicant carriers	542	3	95	20	6	21	687
Carriers in demo project	13	1	8	1	1	3	27
Carriers failed PASA	24	0	6	1	1	0	32
Carriers' application dismissed	251	0	31	5	2	2	291
Carriers with other status	254	2	50	13	2	16	337

SOURCE: Independent Evaluation Panel, September 2008.

Appendix I. Lists of Tables, Figures, and Boxes

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Appendix J. Brief Biographies of Panel Members

Hon. Mortimer L. Downey III is the Chairman of the Board of PB Consult Inc. Mr. Downey served as U.S. Deputy Secretary of Transportation for eight years, from 1993 to 2001, and managed the department's highly regarded strategic planning process. He had significant responsibilities for matters in the international arena, including bilateral negotiations, multinational conferences, and international trade and development missions. He also served on the President's Management Council, as chair of the National Science and Technology Council Committee on Technology, and as a member of the board of directors of Amtrak. For a prior administration, he served as an Assistant Secretary at the Department of Transportation.

Hon. James T. Kolbe is a Senior Advisor at McLarty Associates and a Senior Transatlantic Fellow at the German Marshall Fund United States. He is also an Adjunct Professor in the College of Business at the University of Arizona. For 22 years, from 1985 to 2007, Mr. Kolbe served in the U.S. House of Representatives. Elected for 11 consecutive terms, he represented the Eighth (previously designated the Fifth) Congressional District, comprising the southeastern part of Arizona, with Tucson as the main population area. While in Congress, Mr. Kolbe served for 20 years on the Appropriations Committee of the House of Representatives, responsible for deciding the allocation of the budget and the terms for spending appropriated funds.

Hon. Kenneth M. Mead is a Special Counsel at Baker Botts LLP. He was Inspector General of the U.S. Department of Transportation, for nearly 9 years, following nomination by President Bill Clinton and confirmation by the U.S. Senate in 1997. As Inspector General, Mr. Mead reported to the Secretary of Transportation and the Congress and was a member of the President's Council on Integrity and Efficiency. Prior to becoming Inspector General, he served for 22 years with the U.S. Government Accountability Office, the investigative arm of Congress, where he held the positions of Deputy Assistant Comptroller General for Policy, Director of Transportation and Telecommunications Issues, and Senior Attorney. On February 17, 2006, the U.S. Senate passed a resolution recognizing Mr. Mead for his exemplary service as Inspector General.

Independent Evaluation Panel Report to the U.S. Secretary of Transportation

U.S.-MEXICO CROSS-BORDER TRUCKING DEMONSTRATION PROJECT