



MOTOR CARRIER SAFETY ADVISORY COMMITTEE

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

November 10, 2014

The Honorable T. F. Scott Darling, III
Acting Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Administrator Darling:

In August 2011, the Federal Motor Carrier Safety Administration (FMCSA) tasked the Motor Carrier Safety Advisory Committee (MCSAC) with assessing the safety record of participating Mexico-domiciled motor carriers in the Long-Haul Cross Border Trucking Pilot Program (pilot program) in Task 11-03. FMCSA requested that the MCSAC form a subcommittee to serve as the monitoring Federal advisory committee for the pilot program and invite the Administrator of Mexico's federal motor carrier agency (Dirección General de Autotransporte Federal) or his designee to participate in meetings in a nonvoting advisory capacity. Director Federico Dominguez Zuloaga attended the July 28, 2014, subcommittee meeting and presented information on the regulation of the Mexican commercial motor vehicle industry.

The Cross Border Subcommittee (Subcommittee) met in public meetings to discuss the Task and advise FMCSA concerning designated tasks related to the program on August 31, 2011, May 23, 2012, August 27, 2012, May 21, 2014, and July 28, 2014. On July 28, 2014, the Subcommittee developed a report containing its recommendations, which it submitted to the MCSAC for its consideration. In an October 28, 2014, public meeting the MCSAC deliberated on the Subcommittee's recommendations and is forwarding the Subcommittee's report as the MCSAC recommendation on Task 11-03.

I respectfully submit this report to FMCSA for its consideration.

Sincerely,

//signed//

Stephen C. Owings
Chairman, Motor Carrier Safety Advisory Committee

Enclosure

**MCSAC Task 11-03: Oversight of the Long-Haul Cross Border Trucking Pilot Program
Subcommittee Report to the MCSAC**

Introduction

In Task 11-03, FMCSA requested that the MCSAC form a subcommittee to serve as the monitoring Federal advisory committee for the pilot program. Specifically, FMCSA requested that MCSAC and the Subcommittee:

- Assess the safety record of participating Mexico-domiciled motor carriers;
- Continue to advise FMCSA concerning designated tasks related to the pilot program; and
- Issue a final report addressing whether FMCSA conducted the pilot program in a manner consistent with the objectives outlined in its April 2011 Federal Register Notice.

On April 13, 2011, FMCSA published a Federal Register notice in which it announced its proposal for the initiation of a United States-Mexico cross-border long-haul pilot program to test and demonstrate the ability of Mexico-based motor carriers to operate safely in the United States beyond the municipalities and commercial zones along the United States-Mexico border, consistent with the North American Free Trade Agreement (NAFTA). The April 2011 and subsequent Federal Register notices delineated several objectives of the pilot program. Through data and information provided by FMCSA, the Subcommittee has assessed the safety record of participating Mexico-domiciled motor carriers and has considered information provided by the Administrator of Mexico's federal motor carrier agency (Dirección General de Autotransporte Federal).

The Subcommittee believes that FMCSA has achieved—or will achieve—each of the objectives outlined in the April 2011 and subsequent Federal Register notices, with the exception of the comments outlined below as a caveat to this Subcommittee conclusion. In summary, the Subcommittee concludes that FMCSA has done what the Agency has said it will do as part of the pilot program. However, the Subcommittee questions whether the quantity and quality of the data collected from carriers participating in the program is sufficient to draw an appropriate conclusion about the pilot program. As the majority of inspection and violation data was obtained from four Mexico-domiciled carrier pilot program participants that drove primarily within the commercial border zones, the data appears insufficient to determine whether Mexican-domiciled motor carriers generally operating beyond the commercial zones would have similar safety records as U.S.-domiciled motor carriers.

I. April 13, 2011, Federal Register Notice¹ Objectives

A. Pilot Program Description

1. **Federal Register Statement:** During Stage 1 of the pilot program, the motor carrier's vehicles and drivers would be inspected each time they enter the United States for at least 3 months (76 FR 20807, 20810).
2. **Subcommittee Comment:** While the vast majority of vehicles were inspected at each border crossing during Stage 1, FMCSA acknowledged that not all vehicles were inspected.

¹ *Pilot Program on NAFTA Long-Haul Trucking Provisions; Notice; Request for Public Comment*, 76 FR 20807 (April 13, 2011).

B. Pre-Authorization Safety Audit (PASA)

1. Subcommittee Comments: The Subcommittee believes that each of the PASA-related objectives has been met but has concerns about the lack of disclosure of affiliated motor carriers by motor carrier pilot program applicants in the PASA process.
 - a. FMCSA asked Mexican-domiciled motor carriers to list affiliated motor carriers on the pilot program application and attempted to join applications where it appeared that two motor carriers were the same company.
 - b. Multiple pilot program applicants did not disclose an affiliate that they should have on the application. FMCSA discovered the lack of disclosure in each of the applications and corrected the data.

C. Monitoring, Oversight, and Enforcement

1. Federal Register Statement: FMCSA would equip each vehicle approved for use by Mexico-domiciled carriers in the pilot program with an electronic monitoring device (ELD). As part of participating in the pilot program, the ELD must be operational on the vehicle throughout the duration of the pilot program (76 FR 20807, 20811).
2. Subcommittee Comments:
 - a. Upon review of the ELD data, some violations were noted, which were largely form and manner violations.
 - b. All ELD data should have required annotations.

D. List of Federal Motor Carrier Safety Laws and Regulations for which FMCSA will Accept Compliance with a Corresponding Mexican Law or Regulation

1. Federal Register Statement: FMCSA would require that any driver designated by a Mexico-domiciled carrier for long-haul transportation provide the United States with a copy of the driving record for any Mexican State driver's license he or she may hold (76 FR 20807, 20814).
2. Subcommittee Comment: FMCSA was unable to get copies of records from individual Mexican States.

E. Program Evaluation

1. Federal Register Statement: The objective of the pilot program is to collect and evaluate data on the safety performance of Mexico-domiciled carriers interested in and qualified to take advantage of the cross-border long-haul provisions of NAFTA. Using performance metrics described in the notice, and up to 3 years of data collected during the pilot program, statistical tests would be performed to compare the safety performance of the Mexico-domiciled carriers participating in the pilot program with the overall performance of carriers domiciled in the United States (76 FR 20807, 20817).
2. Subcommittee Comments:
 - a. The Subcommittee is concerned that the data obtained during the pilot program is insufficient to evaluate the safety performance of the actual Mexican commercial motor vehicle (CMV) carriers that might be operating in the United States moving forward.
 - i. The concern is that the sample of Mexican-domiciled motor carriers evaluated in the pilot program is not necessarily representative of other Mexican motor carriers.

- ii. Additionally, the majority of inspections were conducted at the border, which is more anticipated by a motor carrier. Only 5 percent of inspections were conducted beyond the commercial zones.
 - b. Another concern is that FMCSA and State enforcement would not be able to scale the same type of monitoring, compliance, and enforcement for a larger amount of Mexican carriers operating in the United States.
- F. Representation of Data from the Pilot Study
 - 1. Federal Register Statement: If the pilot program demonstrates that Mexico-domiciled carriers are as safe as the average U.S. domiciled carrier, FMCSA would expect to use the same application and screening process for post-pilot program Mexico-domiciled carriers seeking long haul authority. The Agency would conduct a concurrent study of the U.S. carrier violation rates, using inspection data collected on a random basis from U.S. carriers for a 2-week period during the course of the pilot program (76 FR 20807, 20817).
 - 2. Subcommittee Comments:
 - a. Most data obtained in the program was obtained from a few pilot program participants.
 - i. The majority of the data collected in the pilot program is on 2 companies (GCC Transportes and STIL), one of which joined the program in June 2013.
 - ii. Ninety three percent of inspections were for 4 different Mexican-domiciled motor carrier pilot program participants. The Subcommittee questions why only 2 pilot program participants made the majority of the crossings.
 - b. The Subcommittee is concerned that the 15 Mexican-domiciled motor carrier participants in the pilot program, of which 13 are currently active, are not necessarily representative of all Mexican motor carriers.

II. July 8, 2011, Federal Register Notice² Objectives

- A. Equivalency of United States-Mexico Laws and Regulations Governing Safety
 - 1. Federal Register Statement: The United States will address the changes in the U.S. commercial driver's license (CDL) regulations with Mexico during the updating of the 1991 CDL Memorandum of Understanding (MOU) that is currently underway (76 FR 40420, 40428).
 - a. Subcommittee Comment: FMCSA continues to work with Mexico on this. The updating of the 1991 CDL MOU will not be completed before the conclusion of the cross-border pilot program.
 - 2. Federal Register Statement: FMCSA will review drivers' Mexican State commercial driver's license records for violations in a personal vehicle that would result in a suspension or revocation in the United States (76 FR 40420, 40428-40429).
 - a. Subcommittee Comment: FMCSA has attempted to do this but cannot obtain this information from the Mexican States.

² *Pilot Program on the North American Free Trade Agreement (NAFTA) Long-Haul Trucking Provisions; Notice; Response to Public Comments*, 76 FR 40420 (July 8, 2011).

B. Statistical Validity

1. Federal Register Statement: FMCSA plans to evaluate safety based on the following metrics: vehicle out of service (OOS) rate, vehicle violation rate, driver OOS rate, driver violation rate, safety audit pass rate, crash rate, specific violation rates (traffic enforcement, driver fitness, hours of service) (76 FR 40420, 40428).
2. Subcommittee Comments:
 - a. Pilot project data collected and provided to the Subcommittee by FMCSA on July 28, 2014, appear to be insufficient for analysis of long-haul trucking operations in the United States by Mexico-domiciled motor carriers for the following reasons, among others: very few (15) Mexico-domiciled motor carriers participated in the 3-year program and few of those were in the pilot program for more than 1 year; most of the vehicles and motor carriers in the pilot program did not engage in long-haul operations beyond the border commercial zones; the inspection data was collected largely at the border during border crossings when pilot program participants expected to be inspected; and the overwhelming majority of the inspections were conducted on just two motor carriers.
 - b. Specific flaws in the collected data include the following:
 - i. Of the reported 5,046 inspections in the program, all but 4 were conducted at the U.S.-Mexico border when the participating CMV was entering the United States and at a time and place when drivers and motor carriers anticipated being inspected.
 - ii. These border inspections took place near the start of each trip.
 - iii. Only 5 percent of the cross-border trips (1,150 out of 20,918) in the pilot program involved a CMV that travelled beyond the border zone.
 - iv. Of the 1,150 trips involving participating trucks with a destination beyond the border zone, 728 safety inspections (63 percent) were conducted, and all but 9 of these inspections were conducted at the border.
 - v. Of the total 5,046 inspections conducted, 82.4 percent (4,158), were conducted on CMVs of just 2 of the participating motor carriers.
 - vi. Of the 5,046 inspections conducted the vast majority, 81.5 percent (4,110), was Level III (driver only) inspections; only 18.5 percent was Level I or II inspections.
 - vii. Mileage data collected in the program (1.2 million vehicle miles travelled) is insufficient to render any valid statistical analysis regarding crash rate.
 - (A) There has been only one crash involving a pilot program participant since the inception of the program.
 - c. For these reasons, the Subcommittee is concerned that the number of inspections conducted throughout the pilot program (although greater than 4,100, the target number of inspections stated in the April 2011 Federal Register notice) is insufficient to evaluate the program (i.e., comparing

OOS rates from the pilot program to OOS rates for carriers domiciled in the United States).

III. General Subcommittee Comments and Concerns

- A. The Subcommittee believes that although FMCSA may have done most of the things they said they were going to do in the relevant Federal Register notices, the data do not reflect whether the participants are representative of what would happen if the border was generally opened.
- B. The Subcommittee has concerns that the pilot program attracted very few Mexico-domiciled motor carriers. FMCSA provided information regarding how many carriers applied to participate in the pilot program versus how many were accepted.
- C. Some Subcommittee members expressed concern that the vehicles and drivers participating in the pilot program were the best drivers and vehicles for that motor carrier and that less safe vehicles and drivers would be sent into the United States beyond the commercial zones after the pilot program ended and standard authority was granted to all vehicles and drivers for the pilot program carriers.
 - 1. One Mexico-domiciled motor carrier stated to the Subcommittee that it did place its best vehicles and drivers into the pilot program and that it would continue to send its best vehicles and drivers across the U.S. border if it received standard authority following the pilot.
- D. The agency has data showing that more than 1,800 Mexican-domiciled carriers who are authorized to operate within the United States under previous program authority (1,033 certificate carriers³ and 711 enterprise carriers⁴) received 15,256 (certificate) + 64,265 (enterprise) driver inspections and 10,178 (certificate) + 42,985 (enterprise) vehicle inspections and have a better out-of-service rate than U.S. carriers. Certificate and enterprise carriers are monitored at the same level or more leniently than how FMCSA is proposing to treat carriers under the continuation of the current pilot program.

³ Certificate carriers are Mexican-domiciled private carriers transporting their own goods or exempt commodities (e.g., produce, farm goods). From 1987 to 2002, such carriers were able to obtain certificates that allowed them to operate under routes going to specific places beyond the commercial zones.

⁴ Enterprise carriers are Mexican-owned, U.S.-based motor carriers that transport for-hire. Post-NAFTA, these carriers may transport international freight only but may operate beyond the commercial zones.