STATUS REPORT ON NAFTA CROSS-BORDER TRUCKING DEMONSTRATION PROJECT

Federal Motor Carrier Safety Administration

Report Number: MH-2009-034
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Memorandum

U.S. Department of Transportation
Office of the Secretary
of Transportation
Office of Inspector General

Subject: ACTION: Status Report on NAFTA Cross-Border Trucking Demonstration Project
Federal Motor Carrier Safety Administration
Report No. MH-2009-034

Date: February 6, 2009

From: Joseph W. Comé
Assistant Inspector General
for Highway and Transit Audits

Reply to Attn. of: JA-40

To: Acting Federal Motor Carrier Safety Administrator

This final report presents the status of our review of the Department's ongoing North American Free Trade Agreement (NAFTA) cross-border trucking demonstration project, at the conclusion of the first year of the project. The Department initiated the demonstration project on September 6, 2007, for 1 year, and extended the project for 2 additional years on August 6, 2008.[1] Section 6901 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (the Act)[2] requires us to provide interim and final reports on the demonstration project to the Congress and the Secretary of Transportation. We issued an interim report on March 10, 2008.

As required by the Act, our objectives were to determine whether:

- the demonstration project consists of a representative and adequate sample of Mexico-domiciled carriers likely to engage in cross-border operations beyond the United States municipalities and commercial zones on the United States-Mexico border,
- the Department has established sufficient mechanisms to determine whether the demonstration project is adversely affecting motor carrier safety, and
- 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.

[1] 73 FR 45796-45797 (August 6, 2008).
[2] Pub. L. No. 110-28 (2007).

Additionally, during our testimony on March 11, 2008, Congress requested[3] that we examine the circumstances surrounding the February 1, 2008, Trinity Industries de Mexico (Trinity) withdrawal from the project and review information regarding the safety records of Mexican carriers approved for the pilot program, specifically Trinity. Congress also requested that we determine whether any participating carriers with poor safety records were approved for project participation.

We conducted this performance audit from April through October 2008, with field site visits to the southern border crossings occurring from April through June 2008. We conducted this audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Exhibit A provides further details on our audit scope and methodology and exhibit B provides details on our prior audits.

BACKGROUND

In our March 10, 2008, interim report,[4] we reported that: (1) fewer carriers and vehicles than expected had participated in the demonstration project, which provided an insufficient number to reliably predict the safety behaviors of future Mexican long-haul carriers; (2) the Department was supporting an independent panel to assess any adverse safety impact from the project; and (3) the Federal Motor Carrier Safety Administration (FMCSA) had established and enhanced mechanisms for Federal and state monitoring and enforcement of safety rules. However, a key quality control measure designed to ensure that checks of all Mexican drivers and vehicles crossing the border were occurring had not been implemented. Consequently, FMCSA did not have assurance that every Mexican truck and driver participating in the project had been checked when they crossed the border into the United States.

The demonstration project has been challenged both in the courts and by the U.S. Congress. Litigation is before the U.S. Court of Appeals for the 9th Circuit. Legislation was passed in December 2007, regarding funding for cross-border motor carrier demonstration projects. Further details on the status of these actions are provided in exhibit C.

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[3] March 11, 2008, Oversight Hearing on the Cross-Border Truck Pilot Program, U.S. Senate Committee on Commerce, Science and Transportation.

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

RESULTS IN BRIEF

Based on our review of the project's first year, FMCSA continued to have inadequate participation in the project to provide statistically reliable results. The independent evaluation panel, formed to assess any adverse safety impacts resulting from the project, agreed that participation so far had been inadequate and reported that no crashes involving project participants were identified on FMCSA records.

Our review also found that FMCSA had implemented planned enforcement and monitoring activities, such as checks of participating trucks and drivers upon entry into the United States. FMCSA also implemented a quality control measure to provide assurance that all trucks and drivers were checked at the border, but it cannot provide this assurance because it relies on incomplete data. Additionally, the systems set up for monitoring Mexican carriers and checking insurance were working as planned, although the Global Positioning System (GPS) acquired for monitoring truck movements had limited capabilities.

The demonstration project did not have an adequate number of Mexican carrier participants and participants are not representative in some respects of Mexican carriers that applied for long-haul authority. Although during the first year, the participants had no reportable crashes and collectively had out-of-service rates lower than U.S. carriers, FMCSA had not demonstrated that participation in the demonstration project will be adequate to yield statistically valid results, as regulations for a pilot program require.[5] Participation of Mexican carriers was far below projected levels,[6] to date, and the level of participation was not adequate to provide statistically valid findings that will allow FMCSA to project safety performance to the pool of applicants for long-haul authority. The participants were not representative of Mexican carriers likely to conduct long-haul operations[7] in terms of some business characteristics, such as the form of ownership, or in terms of prior safety history. Further, applicants were subjected to a vetting procedure that resulted in 138 Mexican carriers not being eligible for the demonstration project. FMCSA has not decided whether to apply some of these vetting procedures should the border open under NAFTA rules.

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[5] The Act requires FMCSA to conduct the demonstration project in compliance with requirements of a pilot program in 49 U.S.C. 31315(c). Pilot programs must meet certain elements; including a reasonable number of participants to yield statistically valid findings and a specific data collection and safety analysis plan that identifies a method for comparison.

[6] Projections on the number of carriers, trucks, and mileage were made by the Chief Analyst of the Analysis Division, Federal Motor Carrier Safety Administration, Office of Research and Analysis in a declaration dated August 30, 2007.

[7] For this audit, we defined Mexican carriers likely to conduct long-haul operations as those carriers that have applied for authority to travel in the United States beyond the commercial zones along the United States-Mexico border. FMCSA provided us with 775 such applications. The actual number of Mexican carriers that would conduct long-haul operations could be significantly less or more than 775, should the southern border with Mexico be opened.

Specifically, we found that during the first year of the demonstration project, September 6, 2007, through September 5, 2008:

- Participants had a driver out-of-service rate of 0.46 percent and a vehicle out-of-service rate of 8.29 percent. In contrast, U.S. carriers had a driver out-of-service rate of 6.94 percent and a vehicle out-of-service rate of 21.72 percent.

- Only 29 of 100 projected Mexican carriers were admitted to the project and 2 of those carriers have since withdrawn. This level of participation is not adequate to yield statistically valid findings. Only 118[8] of a projected 540 trucks have participated.

- Only 1,443 of 12,516 (11.5 percent) trips that FMCSA recorded were identified as going beyond the commercial zone.[9]

- FMCSA could not substantiate its estimate that each Mexican truck would travel at least 34,500 miles during the year because it did not measure mileage.

- The vetting procedure eliminated from consideration in the demonstration project 138 of 778 Mexican carriers that applied for long-haul authority.[10] As a result, the pool of eligible participants differs from all other applicants for long-haul authority.

The Department will no longer rely on the Independent Evaluation Panel to determine whether the demonstration project is adversely affecting motor carrier safety. In May 2007, the Department announced its intention to provide for an independent evaluation of the demonstration project.[11] This announcement stated that the panel would work independently from other monitoring efforts and that the panel's conclusions would be considered carefully before a decision is made on a permanent full implementation of the NAFTA trucking provisions. In June 2007,[12] the Department clarified the standards that the panel would use to evaluate the demonstration project. Specifically, the panel was to evaluate the

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[8] FMCSA's projection of 540 trucks was based on the number of trucks identified for demonstration project participation during the pre-authorization safety audits. The actual number of trucks that participate will vary from this number as carriers are free to add or delete trucks throughout the project; but indications are that this number is reasonable.

[9] Commercial zones at the southern border extend from 3 miles to about 25 miles from the border and 75 miles within the State of Arizona.

[10] FMCSA provided us with a list of 778 Mexican carriers that applied for authority to conduct long-haul operations in the United States and copies of applications from 775 of the carriers.

[11] 72 FR 23886 (May 1, 2007).

[12] 72 FR 31883 (June 8, 2007).

safety impacts of allowing Mexico-domiciled motor carriers to operate on United States roads beyond the commercial zones. Although the Department supported the panel during the first year of the project, it did not extend the services of the panel beyond the first year. FMCSA has indicated that it will continue to monitor the demonstration project participants and conduct an internal evaluation of any effects of the project on motor carrier safety in the United States using various monitoring and enforcement mechanisms. FMCSA also stated that it would rely on special rules, operational policies, guidelines, and a safety monitoring system for Mexican carriers that operate beyond the commercial zones, and periodic tracking of Mexican carriers' safety performance measures, such as out-of-service rates and reportable crashes, to conduct this evaluation.

FMCSA implemented Federal and state monitoring and enforcement mechanisms, but a key quality control measure was not adequate to provide assurance that every Mexican truck was checked at the border. Specifically, we found that FMCSA took the following actions.

- FMCSA implemented site-specific plans to identify demonstration trucks entering the United States at commercial border crossings. Procedures at 9 of 11 border crossings we visited were effective in reducing the risk that Mexican trucks would not be identified, and FMCSA took immediate action to reduce risk at a 10th site. Risk at the eleventh site was mitigated because very few demonstration project trucks were using that border crossing.

- FMCSA recorded 12,516 checks of Mexican carriers as they crossed the border into the United States, but could not ensure that all trucks were checked at the border. We have no evidence that Mexican carriers were not checked at the border. However, FMCSA's quality control measure that was designed to provide this assurance relies on data from U.S. Customs and Border Protection (CBP) that do not include entries of all demonstration trucks into the United States.

- Approximately 1,700 law enforcement personnel from 16 states took advantage of training FMCSA and the International Association of Chiefs of Police (IACP) offered on foreign motor vehicle awareness and requirements of the demonstration project. In addition, over 1 million education brochures were distributed Nationwide.

- FMCSA's automated Licensing and Insurance and Mexican Monitoring systems are working well to identify infractions of motor carrier safety rules and regulations and initiate enforcement actions.

- For the project participants, as of August 29, 2008, only 74 of 106 trucks identified by the 27 active project participants were outfitted with GPS devices. These devices allow the GPS system to track a truck's location through pings generated automatically at random intervals. GPS installation lagged behind the granting of provisional authority by an average of 61 days. Additionally, the GPS services did not include the capability to identify dates and times of international crossings, detect passage beyond the commercial zones, or track mileage.

Trinity Industries de Mexico (Trinity) withdrew from the project to avoid business disruptions; and its prior safety history showed that its out-of-service rates[13] were lower than those of United States carriers. Trinity did not respond to our request for information on its withdrawal from the demonstration project, but our review of Trinity's written request to withdraw and our discussions with FMCSA personnel indicated that Trinity withdrew from the demonstration project on its own initiative. Further, our analysis of safety performance data indicated that Trinity was not an unsafe carrier in comparison to U.S. carriers. Our review found the following.

- Trinity officials informed FMCSA that requirements to check every truck during every border crossing were proving costly to its operations. Our analysis showed that when Trinity was participating in the demonstration project, it received an average of 16 inspections each day. When not participating, the inspection rate dropped to less than one inspection per day.

- Trinity trucks were not traveling beyond the commercial zone during the demonstration project and a return to commercial zone operations would not disrupt business operations.

- The Owner-Operator Independent Drivers Association's (OOIDA) claim that Trinity had received over 112 violations per truck during the year prior to the demonstration project was substantiated; but OOIDA's claim did not indicate that Trinity's out-of-service violations numbered only 74, or an average of 7.4 out-of-service violations per motorized vehicle over the 1-year period. Trinity's out-of-service rates were lower than similar rates for United States carriers during this same period. We found no evidence that Trinity or other demonstration project participants had poor safety

[13] Out-of-service rates are calculated by dividing the number of inspections yielding one or more out-of-service violations by the total number of inspections performed. Out-of-service violations are those violations considered to be severe enough to place the driver or vehicle out-of-service until the violation is corrected. Driver out-of-service rates are based on North American Standard Truck Inspection Levels I, II, and III. Vehicle out-of-service rates are based on Levels I, II, and V.

histories before being admitted into the project based on FMCSA's data on the operations of these carriers in the United States.

We are recommending that FMCSA determine the minimum number of Mexican carriers that must participate in the demonstration project to yield statistically valid results and develop a plan to meet this level of participation as needed, develop and implement a new quality control plan to provide assurance that all Mexican trucks are checked at the border, and conduct a cost/benefit analysis to evaluate the benefits of renewing GPS services. The complete list of recommendations is on page 24.

We provided FMCSA with our draft report on December 17, 2008. FMCSA provided formal comments on January 16, 2009, which are contained in their entirety in the appendix to this report. In its comments, FMCSA disagreed with our assumption on the number of carriers likely to engage in long-haul operations in the future, a key component in calculating the minimum number of Mexican carriers that must participate in the demonstration project to yield statistically valid results. However, FMCSA did not provide its own assumption of the number of carriers or address certain factors that we consider important in this calculation. In addition, FMCSA provided clarifying comments on other statements in the report, particularly on our examination of the representativeness of the project participants, and discussed plans to use GPS as a component of a new quality control plan.

FMCSA concurred with all our recommendations except the recommendation to determine whether using GPS services provides benefits that outweigh the costs. We accepted FMCSA's alternative action to include use of GPS as part of its revised quality control plan in lieu of cost/benefit analysis and requested that FMCSA provide its target completion dates, as required, for all planned actions. FMCSA comments and our response are fully discussed beginning on page 25.

FINDINGS

Demonstration Project Lacks An Adequate Number of Carriers and Participants Are Not Representative In Some Respects of Mexican Carriers Likely to Conduct Long-Haul Operations in the United States

Based on our analysis, at the end of the first year of the demonstration project, participants had lower out-of-service rates than all U.S. carriers, but FMCSA had not defined or enrolled an adequate number of Mexico-domiciled carriers to provide statistically reliable results, as required by Congress. In announcing the

demonstration project, FMCSA stated that up to 100 Mexican carriers would participate in the project and provided a projection of the number of trucks that 100 Mexican carriers would operate and the mileage they would generate. At the end of the first year of the project, only 29[14] had been granted provisional operating authority. Based on our statistical analysis, this level of participation is not adequate to project certain behaviors, such as safety performance, to those Mexican carriers likely to conduct long-haul operations in the future.[15]

The 29 carriers that participated in the project were not representative of all Mexican carriers that have applied for long-haul authority in some respects. The participants demonstrated statistically significant differences from all other applicants in terms of certain business characteristics as well as out-of-service rates measured over the 4-year period prior to the demonstration project. This difference continued during the first year of the demonstration project.

Finally, participants may not be representative because they were subjected to and passed a vetting process that FMCSA applied to applicants for the demonstration project. Only those applicants that successfully passed a vetting process were allowed to participate in the project. The vetting process excluded 138 (about 18 percent) of 778 applicants for long-haul authority that FMCSA is tracking; that is, those that carry passengers or hazardous materials, or had outstanding FMCSA enforcement actions or credible evidence of criminal wrongdoing. FMCSA officials stated that they have not decided whether criminal vetting procedures will be applied to all Mexican carriers that apply for long-haul operating authority should the border be opened.

Although participation was not sufficient to provide performance measures that could be projected to all Mexican carriers likely to conduct long-haul operations in the future, the out-of-service rates for participants during the first year were significantly lower than the rates for U.S. carriers. In addition, the out-of-service rates for participants were lower than rates for other groups of Mexican carriers that already operate in the United States, including commercial zone carriers[16] and grandfathered and certificated carriers [17] as shown in table 1 below.

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[14] Of the 29 carriers who have participated in the demonstration project, 2 withdrew in the first year. Trinity withdrew from the project on February 1, 2008, after 79 days of participation and Orlando Nevid Lopez Hernandez withdrew on June 19, 2008, after 107 days of participation.

[15] Exhibit A provides our statistical analysis.

[16] Commercial zone carriers are Mexican carriers that are restricted to operations in the commercial zones along the United States-Mexico border. They are commonly referred to as OP-2 carriers.

[17] More than half of the applicants received Interstate Commerce Commission permission to operate in the United States before Congress imposed a moratorium in 1982, (referred to as grandfathered carriers) or received permission to operate in the United States before the 2002 Interim Final Rules implemented NAFTA (referred to as certificated carriers).

Table 1. Comparison of Out-of-Service Rates of Project Participants To Other Carrier Groups From September 6, 2007, Through September 5, 2008

Carrier Group	Driver Out-of-Service Rates (%)	Vehicle Out-of-Service Rates (%)
Project Participants	0.46	8.29
Commercial Zone Carriers	1.08	21.60
Grandfathered/Certificated Carriers	3.79	24.23
U.S. Carriers	6.94	21.72

Source: OIG analysis of FMCSA's Motor Carrier Management Information System (MCMIS) data

FMCSA Has Not Defined the Minimum Number of Participants Required to Produce Statistically Valid Results

In its May 1, 2007, announcement of the demonstration project, FMCSA stated it would allow up to 100 Mexican carriers to operate throughout the United States to demonstrate the ability of Mexican carriers to operate safely beyond the commercial zones. FMCSA projected that through those 100 carriers, 540 Mexican trucks would participate in the project. Although FMCSA was of the opinion that this level of participation would yield statistically valid results based on the 989 Mexican carriers that applied for long-haul authority,[18] it did not identify the minimum number of Mexican carriers required to provide statistically valid results.

To compute a sample size for the number of Mexican carriers required for valid results, FMCSA must define:

- the universe of Mexico-domiciled carriers likely to travel beyond the commercial zones for which estimates are to be made;
- the sampling unit for which measurements are to be made, such as drivers, vehicles, trucks, or carriers;
- the attributes or variables to be estimated or compared, such as driver out-of-service rates, vehicle out-of-service rates, or crash rates;
- the confidence level; and
- the margin of error that these estimates should achieve.

[18] We could not substantiate that 989 carriers had applied for long-haul authority.

FMCSA will need to gather relevant data, such as the number of inspections, trucks, crashes, out-of-service violations (driver and vehicle), and vehicle miles traveled in order to make these computations. Should the minimum number of carriers required to yield statistically valid results be greater than the number of Mexican carriers that have participated to date, FMCSA would need to provide a plan for achieving adequate participation in the demonstration project.

At the end of the first year of the project, only 29 carriers have participated in it, 2 of which subsequently withdrew. Based on our universe of 775 Mexican carriers likely to engage in operations beyond the commercial zones, this level of participation is not adequate to provide statistically valid findings that will allow FMCSA to project the safety characteristics of project participants to the pool of applicants for long-haul authority. We did not contact Mexican carriers to determine why participation has been so low, but the Secretary stated that the carriers' uncertainty over whether the project would continue has been a major factor. Also, FMCSA officials cited the cost of insurance as another deterrent. Further, as detailed in exhibit C, litigation and pending actions may affect the continuation of the demonstration project.

FMCSA had not met its projections for the number of trucks that would participate in the project or the mileage that those trucks would accumulate in the United States. FMCSA projected that 540 trucks would participate and accumulate between 9 million and 18 million vehicle miles traveled. FMCSA indicated this level of participation would be more than adequate to provide a statistically valid picture of the operational safety of the Mexican carriers participating in the project and, by extension, of other such carriers interested in operating in the United States. However, during the first year, only 118 trucks[19] participated, or 22 percent of the projection, and the miles traveled by those trucks were unknown. FMCSA had not measured mileage—a key factor required for measuring crash rates. Moreover, while the program is designed for long-haul operations, FMCSA data show that only 11.5 percent of the trips traveled were beyond the commercial zones. However, based on a judgmental review of GPS data, we believe that one carrier was inaccurately recorded as going beyond the zone. This would reduce the percentage of trips beyond the zone to 8.4 percent.

Although FMCSA provided evidence that 36 additional carriers could join the project upon providing proof of financial responsibility,[20] only 1 carrier has joined since July 17, 2008.[21] Until FMCSA defines the minimum number of participant

[19] This number represents the number of trucks inspected during the pre-authority safety audits. The actual number of trucks that participated will vary from this number as carriers are free to add or delete trucks throughout the project, but indications are that this number is a reasonable estimate of actual trucks that participated.

[20] Proof of financial responsibility is usually demonstrated through an insurance policy.

[21] Autotransportes de Distribucion Y Consolidacion SA de CV was granted provisional operating authority on October 8, 2008.

carriers and the assumptions behind that number, it cannot state that the participation was sufficient to provide statistically reliable results.

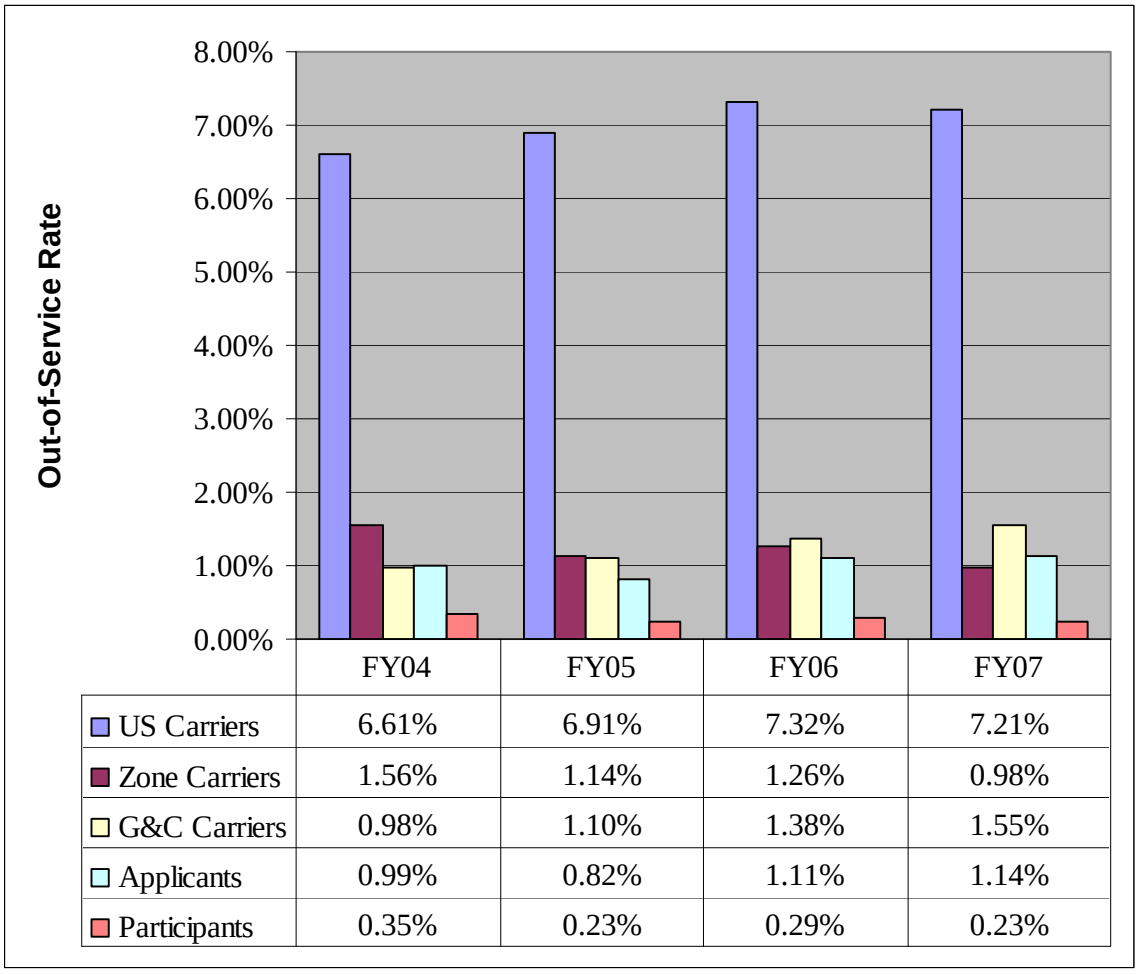
Participants Were Not Representative of Current Applicants for Long-Haul Authority In Terms Of Some Business Characteristics and Prior Safety History and Were Subjected To a Vetting Process That May Not Apply In the Future

To determine whether the demonstration project participants were representative of all Mexican carriers likely to conduct long-haul operations beyond the commercial zones, we examined the business characteristics and prior safety of applicants for long-haul authority. FMCSA provided us with copies of 775 carrier applications, which we used to identify carriers' business characteristics. We compared the characteristics of the participants to those of the remaining applicants to detect any statistically significant differences between these groups. We found that the participants were statistically different from the other applicants for two of the seven characteristics we tested.

The two characteristics that were statistically significantly different were the form of ownership and the type of registration sought. We found that the most likely explanations for these differences were that none of the participants indicated they were partnerships in contrast to 17 percent of the remaining applicants and participants reported proportionately more carriers that applied for registration as a motor common carrier of property or motor contract carrier of property and proportionately less for registration as a motor private carrier. Exhibit A contains more details on our testing.

Further, the 29 participants were not representative of the other applicants in terms of prior safety history. Specifically, the participants' driver and vehicle out-of-service rates were statistically significantly lower than the remaining applicants over the 4 fiscal years immediately preceding the demonstration project. In addition, the participants had statistically significantly lower out-of-service rates than other Mexican carriers that currently operate in the United States, including commercial zone carriers (zone carriers) and grandfathered and certificated carriers (G&C carriers), as shown in figures 1 and 2 on the following two pages.

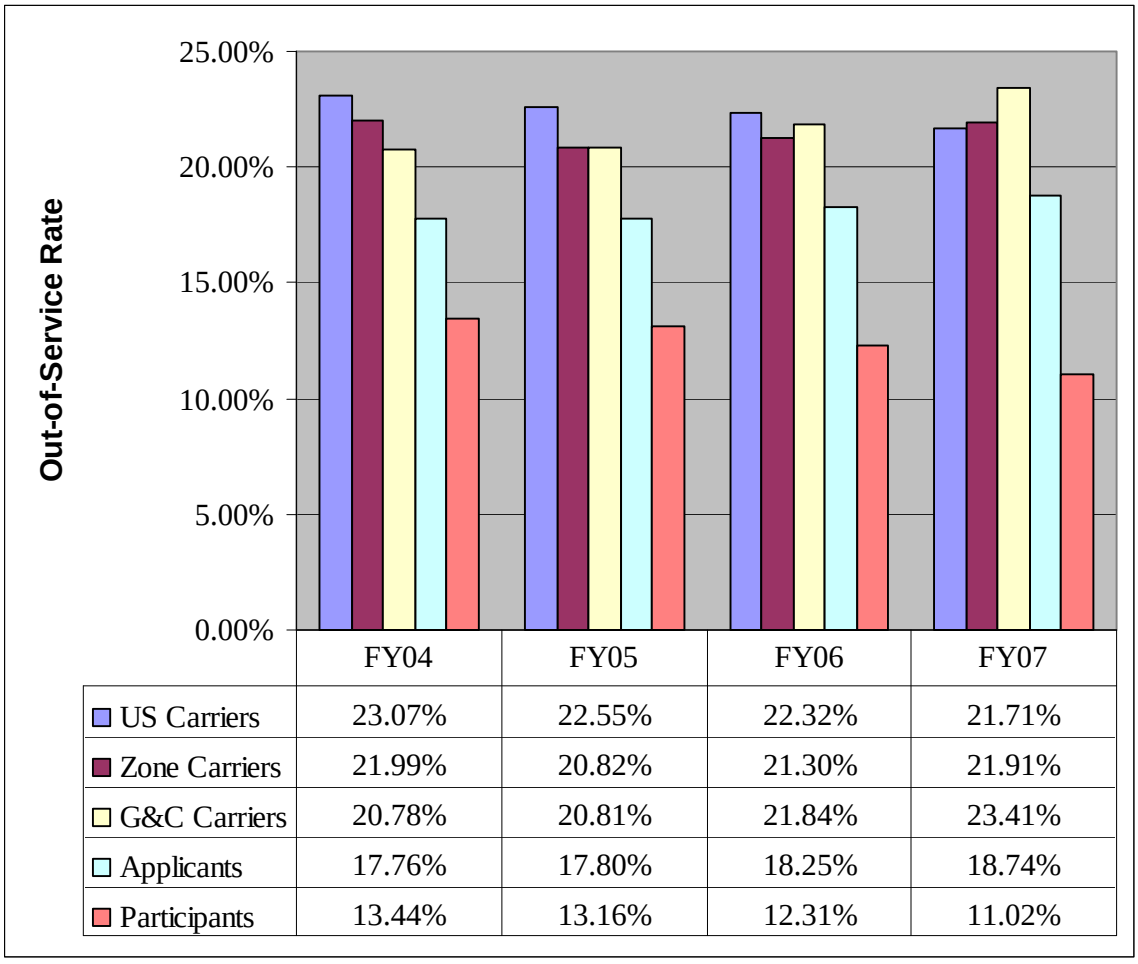
Figure 1. Driver Out-of Service Rates by Comparison Groups, Fiscal Years 2004-2007



	FY04	FY05	FY06	FY07
US Carriers	6.61%	6.91%	7.32%	7.21%
Zone Carriers	1.56%	1.14%	1.26%	0.98%
G&C Carriers	0.98%	1.10%	1.38%	1.55%
Applicants	0.99%	0.82%	1.11%	1.14%
Participants	0.35%	0.23%	0.29%	0.23%

Source: OIG analysis of FMCSA's data in the Motor Carrier Management Information System (MCMIS). Our analysis of FY 2007 utilized data through September 5, 2007.

Figure 2. Vehicle Out-of Service Rates by Comparison Groups, Fiscal Years 2004-2007



	FY04	FY05	FY06	FY07
US Carriers	23.07%	22.55%	22.32%	21.71%
Zone Carriers	21.99%	20.82%	21.30%	21.91%
G&C Carriers	20.78%	20.81%	21.84%	23.41%
Applicants	17.76%	17.80%	18.25%	18.74%
Participants	13.44%	13.16%	12.31%	11.02%

Source: OIG analysis of FMCSA's data in the Motor Carrier Management Information System (MCMIS). Our analysis of FY 2007 utilized data through September 5, 2007.

Finally, demonstration project participants may differ from Mexican carriers likely to conduct long-haul operations because participants were subjected to and passed a criminal vetting process. In an effort to increase safety, FMCSA designed the demonstration project to exclude Mexican carriers transporting hazardous materials or passengers or those carriers with unresolved FMCSA enforcement actions, open investigations, convictions, or other credible evidence of wrongdoing. The vetting process eliminated from project consideration 138 of 778 Mexican carriers that applied for long-haul authority. FMCSA officials stated that they have not decided whether all Mexican carriers that apply for long-haul operating authority will be subjected to a criminal vetting process should the border be opened. Accordingly, if criminal vetting procedures are not applied in the future, the 138 carriers that were eliminated from project consideration may be eligible to conduct long-haul operations, and the demonstration project participants will differ from future carriers in that they were subjected to and passed these vetting procedures.

The Department Will No Longer Rely on the Independent Evaluation Panel To Determine Whether the Demonstration Project Is Adversely Affecting Motor Carrier Safety

When the demonstration project was announced in the Federal Register in May 2007, the Department stated its intention to provide for an independent evaluation of the demonstration project through an Independent Evaluation Panel. The panel was to work independent of other monitoring efforts and the Department was to carefully consider the panel's conclusions before making a decision on a permanent full implementation of the NAFTA trucking provisions. In June 2007,[22] the Department clarified the specific standards that the panel would use to evaluate the demonstration project. Our previous work[23] verified that the Department had engaged former United States Representative Jim Kolbe, former DOT Deputy Secretary Mortimer Downey, and former DOT Inspector General Kenneth Mead to serve on the panel.

The Department provided resources with which the panel engaged experts to conduct the evaluation for a 1-year period. Although the Department extended the demonstration project for 2 additional years, it has not engaged the panel to continue its assessment beyond the first year. Noting that an Independent Evaluation Panel is not required by law, FMCSA stated that throughout the duration of the demonstration project, it will continue to monitor all participating Mexican carriers and conduct an internal evaluation of the effect the project has on motor carrier safety in the United States. FMCSA also stated that it would rely on

[22] 72 FR 31883 (June 8, 2007).

[23] OIG Report Number MH-2008-040, "Interim Report on NAFTA Cross-Border Trucking Demonstration Project," March 10, 2008.

special rules, operational policies, guidelines, and a safety monitoring system for Mexican carriers that operate beyond the commercial zones, and periodic tracking of Mexican carriers' safety performance measures, such as out-of-service rates and reportable crashes, to conduct this evaluation.

The panel issued its report to the Department on October 31, 2008. Many of the panel's conclusions mirror our own. For example, we agree with the panel's conclusion that the number of project participants fell far short of the projected numbers. The panel also concluded, and we agree, that during the first year, project participants had safety performance measures comparable to or better than United States carriers, commercial zone carriers, and grandfathered and certificated carriers and had no reportable crashes. However, we both concluded that project participation was too low to make statistical projections from the participants to the other Mexican carriers that are likely to seek long-haul authority in the future. Further, the panel reported that the participants were not significantly different from the universe of applicants in terms of business characteristics, which was similar to our results for five of the seven characteristics we reviewed.

Specifically, the panel reported the following.

- Pre-authorization safety audits were comprehensive and adhered to applicable regulations and statutory requirements,[24] but FMCSA did not implement its statement that a violation of any of the 11 critical violations would merit failure of the safety audit as stated in FMCSA Federal Register notice of June 8, 2007. (See page 45 for FMCSA's response.)

- FMCSA implemented site-specific plans with CBP, honored its commitment to check every truck every time, and maintained inspection equipment and capacity to conduct meaningful truck inspections of the demonstration project trucks.

- FMCSA initiated a quality control plan in March 2008 to provide assurance that all Mexican trucks and drivers were checked each time they crossed into the United States.[25]

- FMCSA checked the English language skills of Mexican drivers in the demonstration project in accordance with protocols.

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[24] We examined the PASA process during our initial work on the demonstration project as discussed in OIG Report Number MH-2007-065, "Issues Pertaining to the Proposed NAFTA Cross-Border Trucking Demonstration Project," September 6, 2007.

[25] The panel verified that FMCSA had implemented a quality control plan but did not independently verify FMCSA's results with CBP.

- All 29 Mexican carriers obtained the required minimum $750,000 in insurance before they received long-haul authority. However, one carrier allowed its insurance to lapse and subsequently operated illegally in the United States without insurance or operating authority.

- States received training and guidance from FMCSA on English language proficiency assessment and requirements for placing Mexican vehicles out of service.

- Far more Mexican carriers were operating legally beyond the border commercial zones than were in the demonstration project, including carriers operating within specific states or anywhere in the United States under pre-NAFTA provisions, and within border commercial zones. Vehicle out-of-service rates for these carriers were higher than the rate for demonstration project carriers. Only the project participants were subject to the pre-authorization safety audit.

- The Mexican drug and alcohol test collection system was at least equivalent to U.S. requirements in most respects.[26]

- Mexico was making progress in improving inspection and accident databases.[27]

It is our opinion that by disengaging the panel, the Department has forgone a valuable independent assessment of the impacts of the demonstration project on motor carrier safety in the United States, and will no longer have input from the panel when making decisions about cross-border trucking at the close of the demonstration project.

FMCSA Took Actions Intended To Ensure Carriers' Compliance With Safety Rules, But Its Quality Control Measure To Ensure That All Trucks Were Checked at the Border Was Not Adequate

In our March 2008 report, we identified Federal and state monitoring and enforcement activities that FMCSA developed to ensure that demonstration project participants were complying with safety laws and regulations. The most important of those activities was a plan to check every Mexican truck every time it crossed the border into the United States. The checks are important because they verify that drivers are properly licensed and trucks have undergone recent inspections before entering the United States. Although FMCSA is conducting

[26] Our work on Mexico's drug and alcohol collection system will be reported in our next NAFTA annual report.
[27] We will report on the status of Mexico's inspection and accident databases in our next NAFTA annual report.

checks of Mexican carriers as they cross the border, a key quality control plan designed to provide assurance that all trucks are checked is not adequate because it relies on incomplete data. Based on our analyses, other monitoring and enforcement activities are working well, although the current agreement for Global Positioning System (GPS) services to track demonstration project trucks has limitations.

FMCSA's Quality Control Plan Could Not Provide Assurance That All Trucks Crossing the Border Were Checked

FMCSA stated that during the demonstration project, it would check every truck and driver that crossed into the United States from Mexico to verify that the driver had a valid license and was proficient in the English language, and that every truck showed evidence of recently passing a Level I North American Safety Inspection. Our site visits to 11 commercial border crossings (listed in exhibit D) verified that FMCSA implemented site-specific plans to identify demonstration project trucks at those crossings and was conducting the required checks. Additionally, FMCSA was recording the results of those checks, although the method it used was inefficient and contributed to missing or duplicated entries. In order to provide assurance that FMCSA had checked every truck and driver every time, FMCSA implemented a quality control plan; however, that plan is not adequate because it relies on incomplete data.

FMCSA's Implementation of Site-Specific Plans. During each of our 11 site visits, we examined how FMCSA had implemented the site-specific plan to determine whether the procedures used reduced the risk that trucks would be missed. In our judgment, procedures at nine crossings were effective in reducing those risks. To its credit, FMCSA took immediate corrective action at the Eagle Pass, Texas, crossing where this risk was significant. At the Tecate, California, crossing, risk was mitigated by the fact that very few participant crossings were occurring and because planned improvements to the crossing were to be in place by August 2008. Those improvements have been delayed until early 2009, but the risk that trucks will be missed will become elevated if truck crossings increase.

FMCSA's Recording of Checks Performed at the Border. We found that FMCSA was accurately recording information about checks performed on demonstration project trucks and drivers, but the process used to forward the results to FMCSA Headquarters was inefficient. For each entry of a demonstration project truck, border inspectors prepared an inspection report and another document providing evidence that the driver's license was checked for validity, the driver was tested for English language proficiency, and the truck had evidence of passing a recent safety inspection or that a new inspection was performed. That information was then copied to a spreadsheet and forwarded to FMCSA Headquarters for consolidation.

This inefficient method of recording the results of checks performed on trucks and drivers contributed to duplicate and missing entries. For example, we identified at least 111 border inspections conducted on Trinity vehicles at Eagle Pass, Texas, that were not recorded on the spreadsheet, meaning that nearly 9 percent of Trinity's crossing records were omitted. In July 2008, FMCSA revised its method to record checks performed on trucks and drivers and added the missing Trinity crossing records to the consolidated spreadsheet. We have not conducted audit procedures on FMCSA's new method of recording checks that are performed at the border crossings.

FMCSA's Quality Control Plan. FMCSA had no assurance that every demonstration truck was checked every time because its quality control plan relied on incomplete data. FMCSA's quality control plan relies on truck crossing data from CBP and states that a 10-percent random sample of CBP data will be reconciled against FMCSA data. Through September 5, 2008, FMCSA recorded 12,516 crossings of Mexican trucks participating in the demonstration project. However, our analysis found that CBP recorded fewer truck crossings than FMCSA.

From September 6, 2007, through February 29, 2008, the early stage of FMCSA's quality control plan, CBP recorded 2,896 truck crossings of project carriers but FMCSA recorded 3,939 truck crossings. This difference occurred partly because CBP did not record truck crossings for empty trucks or crossings for participant carriers that did not have a standard carrier alpha code.[28] For example, CBP did not record any crossings for 7 of the 17 Mexican carriers that had participated in the demonstration project during that period. Additionally, CBP data did not distinguish between different border crossings in the same city and combined crossing data for the Columbia Solidarity Bridge with the World Trade Bridge, both located in Laredo, Texas. FMCSA's reconciliation was therefore restricted to certain crossings and carriers where CBP did record data. In our opinion, this methodology was neither random nor adequate to document the extent to which FMCSA was checking every truck every time.

FMCSA stated that in light of the unanticipated deficiencies of CBP data, it had supplemented its quality control plan with additional assurance measures. FMCSA stated that it was using GPS technology to verify that a sample of demonstration project trucks operating in the United States were checked when they crossed the border. However, until July 1, 2008, FMCSA had not been recording vehicle specific information during the checks that would facilitate this verification. We applaud FMCSA's efforts to supplement its quality control plan, but in light of FMCSA's belief that it cannot obtain complete border crossing data from CBP, a new quality control plan is warranted.

[28] A standard carrier alpha code is a unique two- to four-letter code used to identify transportation companies.

To its credit, FMCSA implemented other activities to ensure that participants are complying with safety laws and regulations when trucks travel beyond the border. Those activities include training state and local law enforcement on demonstration project requirements, using GPS to track trucks, reporting United States convictions of Mexican drivers to a centralized database, and using computer systems to monitor compliance with insurance requirements and identify serious infractions of safety laws.

FMCSA Conducted Significant Outreach to State and Local Law Enforcement Personnel

FMCSA distributed educational brochures related to the demonstration project to law enforcement personnel across the country and made formal training available. In conjunction with the IACP, FMCSA distributed over 1 million educational brochures related to the demonstration project subjects and trained over 1,800 state and local law enforcement personnel. The training covered foreign commercial motor vehicle awareness, operating authority, cabotage, and English language proficiency related to the demonstration project.

FMCSA and IACP used a train-the-trainer approach and provided us with a list of 158 state and local law enforcement personnel from 47 states who were trained as trainers. In turn, as of July 31, 2008, those trainers trained an additional 1,709 state and local law enforcement personnel during 62 separate classes in 16 states. We contacted a limited number of training attendees, who stated that the training was beneficial, particularly in providing contact numbers to obtain guidance should a questionable situation develop. However, FMCSA's list indicated that law enforcement personnel in 34 states[29] have not yet taken advantage of this training.

According to FMCSA, 1.1 million educational brochures relating to operating authority and cabotage and 370,000 brochures announcing that foreign motor vehicle awareness training was available were distributed to state and local law enforcement groups throughout the country. FMCSA also distributed about 40,000 English language proficiency brochures to Mexican carriers at inspection locations. These educational brochures can be accessed on FMCSA's website.

FMCSA's Global Positioning System to Monitor Demonstration Project Trucks Had Limited Capabilities

In September 2007, just after the demonstration project began, FMCSA announced that it would enhance its monitoring and enforcement capabilities for demonstration project participants through the use of GPS technology, a measure

[29] Our analysis included the 48 contiguous United States, Alaska, and the District of Columbia. Hawaii was excluded because Mexican trucks would not operate there.

not required by law. In November 2007, FMCSA entered into a $500,000 agreement with the Department of the Army to obtain and install a GPS device on all trucks intended for use in the demonstration project and obtain access to a GPS tracking system owned by Qualcomm, Inc. According to the 2007 announcement, GPS tracking would allow FMCSA to identify indications of cabotage and hours-of-service violations as well as identify vehicle positions and the date and time of international and state crossings. FMCSA provided evidence that it was monitoring trucks for potential violations of cabotage and hours-of-service violations using GPS.

In our opinion, the GPS services that FMCSA obtained had limited capabilities. The agreement with the Department of the Army did not include a geo-fencing feature, which could alert FMCSA of a truck's entrance into a border crossing or exit from a commercial zone. Although GPS tracking can be used to determine when a truck approaches the border, our observations at the border crossings and our use of the GPS system indicated that this would require regular monitoring of trucks as they are in route towards the border, and success using this method is largely dependent on the frequency of location efforts commonly called pings. As the frequency of the pings increases, so does the ability to identify the current location and route taken by a truck. FMCSA indicated that random pings averaging 30 minutes apart are sent from each truck; however, we saw wide variations in the frequency of pings from every few minutes to hours apart.

Another limitation is that the current agreement with the Department of the Army does not include calculation of the number of miles driven by demonstration project trucks in the United States. However, the agreement does allow GPS data to be used to identify the approximate routes demonstration project trucks travel in the United States. In turn, those routes can be entered into a mapping program, such as Google Maps, to calculate the approximate mileage a truck travels.

The current GPS agreement requires that carriers present their vehicles in the United States for installation. In our opinion, this requirement delayed installation of the GPS devices and FMCSA's use of the system. Installation lagged behind obtaining provisional authority by an average of 61 days. During this lag, carriers were allowed to conduct operations in the United States but FMCSA was not able to use the GPS system to track the trucks.

As of August 29, 2008, 74 of 106 Mexican trucks identified for use by the 27 active carriers had been fitted with GPS devices. By October 17, 2008, installation of GPS devices was complete for 90 percent of the vehicles identified by active carriers (88 of 98 vehicles). However, the devices installed on the trucks were not suitable for tracking truck mileage and new devices that could accomplish this task would be too costly. FMCSA hopes to resolve some of these issues when the present agreement expires in March 2009 and a new contract is

negotiated. As this project moves forward, FMCSA must determine whether the cost of continuing the use of GPS is worth the benefits that will be provided, before it negotiates a new contract.

FMCSA Took Steps To Ensure That All Convictions of Mexican Drivers Were Recorded In the Mexican Conviction Database

In our 2007 annual NAFTA follow-up audit,[30] we found that known problems with data recorded in the Mexican Conviction Database (MCDB, formerly known as the 52nd State System) remained. For example, the number of Mexican commercial driver's license convictions that Texas and New Mexico reported in the MCDB showed a dramatic decline in the beginning of 2006 when compared to prior months. The MCDB also showed notable differences between the total number of Arizona, California, and New Mexico reported convictions versus Texas reported convictions when comparisons were made. This required FMCSA to work with the four border states to develop and implement corrective action plans to solve these problems.

We verified that Texas, California, and New Mexico completed their corrective actions. Arizona was to have completed its testing of a new electronic system to identify convictions involving a commercial driver's license holder by September 30, 2008. Additionally, FMCSA implemented a plan to have states review and verify submissions of convictions to the MCDB on a quarterly basis. This action successfully identified a problem with New Mexico's conviction data during the first quarter of 2008. FMCSA should continue to work with the states to review convictions submitted to the MCDB and ensure that Arizona completes its corrective action plan. We will follow-up on this issue in our annual audit report.

FMCSA's Licensing and Insurance and Mexican Monitoring Systems Were Working Well To Monitor Carrier Insurance Coverage and Initiate Any Needed Enforcement Actions

Our examination of information maintained in FMCSA's licensing and insurance system and our direct contact with insurance companies confirmed that all project participants had the required $750,000 in bodily injury and property damage liability insurance on file before they were granted provisional operating authority. In addition, we found that the Mexican monitoring system was tracking insurance expiration dates and sending out appropriate warning letters to project participants. For example, when one demonstration project carrier did not pay its insurance premium, its insurance coverage was terminated and FMCSA revoked its

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

provisional operating authority. Following the revocation, the carrier continued to operate in the United States, which resulted in the Mexican monitoring system triggering an enforcement action. The carrier was fined and after obtaining insurance was readmitted to the demonstration project.

Trinity Withdrew From the Project To Minimize Business Disruptions and Its Prior Out-of-Service Rates Were Lower Than United States Carriers

In response to a congressional question for the record during a March 2008 hearing, we examined the circumstances of Trinity's withdrawal from the demonstration project and determined whether claims that Trinity was admitted to the project despite being an unsafe carrier could be substantiated. According to FMCSA's conversations with Trinity officials and our review of Trinity's letter requesting withdrawal from the project, Trinity withdrew to minimize disruptions to its operations. According to FMCSA, after participating in the demonstration project for 79 days, Trinity requested on its own initiative to withdraw from the project to minimize delays associated with the intense inspection process at the border. In addition FMCSA stated that Trinity's out-of-service rates were lower than the rates of United States carriers. Trinity did not respond to our request for information on its withdrawal; nonetheless, we used FMCSA data to substantiate FMCSA's statements regarding Trinity's withdrawal and prior safety performance.

During the project, Trinity did not conduct operations outside the commercial zone and it returned to commercial zone operating authority upon withdrawal from the project. Our review of FMCSA data indicated that the demonstration project inspection process was intensive and may have been disruptive to Trinity's operations. During the 79 days that Trinity was in the demonstration project, Trinity underwent an average of 16 truck inspections daily at the border. However during the period of the first year of the project when Trinity did not participate, Trinity trucks were inspected on average less than once daily.

During its participation in the demonstration project, we calculated that Trinity had a driver out-of-service rate of 0.24 percent and a vehicle out-of-service rate of 10.36 percent. These rates were comparable to Trinity's previous year's rates of 0.16 percent and 11.17 percent, respectively, when United States carriers averaged a driver out-of-service rate of 7.22 percent and a vehicle out-of-service rate of 21.74 percent. This confirmed FMCSA's assertion that Trinity's out-of-service rates were lower than that of United States carriers. Our review of MCMIS crash data did not locate any crashes involving Trinity trucks.

Claims by the Owner-Operator Independent Drivers Association that Trinity received over 112 violations per truck during the year prior to the demonstration

project[31] were correct but did not note that Trinity used at least 106 trailers in addition to 10 motorized vehicles. Our analysis showed that when trailers were included in the analysis, Trinity averaged 3.4 violations per motorized vehicle and 8.3 violations per trailer. In addition, only 74 of the 1,124 violations were out-of-service violations. Further, Trinity was inspected much more frequently as a commercial zone carrier than United States carriers of similar fleet size (9 to 11 motorized vehicles). In fact, during the year prior to the demonstration project, Trinity was inspected 611 times while U.S. carriers of similar size (9 to 11 motorized vehicles) were inspected on average 8 times.

Trinity's withdrawal did not significantly impact the safety performance exhibited during the first year of the demonstration project. If Trinity had continued to participate in the demonstration project and maintained the same levels of participation and performance, the driver out-of-service rate would have been lowered by 0.06 percentage points and the vehicle out-of-service rate would have increased by 0.88 percentage points. As shown in table 2 below, even if Trinity had remained in the demonstration project, the participant carriers' out-of-service rates would have been significantly lower than those of United States carriers.

Table 2. Impact of Trinity's Withdrawal on the Demonstration Project Out-of-Service Rates Versus U.S. Carriers Out-of-Service Rates

Rates Reviewed	**Percentage**
Driver Out-of-Service Rates	
Demonstration Project Participants	0.46
Estimate, if Trinity had not withdrawn	0.39
U.S. Carriers	6.94
Vehicle Out-of-Service Rates	
Demonstration Project Participants	8.29
Estimate, if Trinity had not withdrawn	9.17
U.S. Carriers	21.72

Source: OIG analysis of FMCSA's data in the Motor Carrier Management Information System.

Finally, we did not find evidence that other demonstration project participants had poor safety histories before being admitted into the project, based on FMCSA's data on the operations of these carriers in the United States.

[31] OOIDA reviewed Trinity's performance during the period September 21, 2006 through September 21, 2007. Our analysis also covered this period. We refer to this period as the year prior to the demonstration project.

RECOMMENDATIONS

We recommend that the FMCSA Administrator:

1. Demonstrate that the project meets congressional requirements that the demonstration project yield statistically valid results by doing the following.

    a. Determine the minimum number of Mexican carriers that must participate in the demonstration project necessary to yield statistically valid results. In order to calculate this number, FMCSA must address, at a minimum:

        - the definition of the universe of Mexican carriers likely to travel beyond the commercial zones for which estimates are to be made;
        - the sampling unit for which measurements are to be made, such as drivers, vehicles, trucks, or carriers;
        - the attributes or variables to be estimated or compared, such as driver out-of-service rates, vehicle out-of-service rates, or crash rates;
        - the confidence level; and
        - the margin of error that these estimates should achieve.

    b. Develop a plan for achieving an adequate level of participation if the current number of Mexican carriers participating in the project is less than the number of carriers necessary to yield statistically valid results.

    c. Provide to the OIG and appropriate congressional committees, the calculated minimum sample size, the methodology used to calculate the minimum sample size, and the plan to achieve adequate participation of Mexican carriers in the demonstration project as needed.

2. Obtain assurance that every demonstration truck is checked every time it crosses into the United States by:

    a. Developing and implementing a new quality control plan.

    b. Providing to OIG and appropriate congressional committees a complete description of this plan and the procedures used to implement the plan.

3. Conduct a cost/benefit analysis to determine whether renewing GPS services provides benefits that outweigh the costs.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

We provided FMCSA with a draft of this report on December 17, 2008. On January 16, 2009, FMCSA provided us with formal comments, which are contained in their entirety in the appendix. FMCSA stated that in large part, it agrees with our recommendations except the recommendation to conduct a cost/benefit analysis to determine whether renewing GPS services provides benefits that outweigh the costs. FMCSA also disagreed with our assumption that the applications submitted by Mexican carriers for long-haul authority was equal to the universe of carriers likely to engage in long-haul operations in the future. FMCSA offered additional comments to clarify statements in the report, particularly on our examination of representativeness of the project participants. FMCSA comments on the recommendations and our response are summarized below.

Recommendation 1.a. In response to the recommendation that FMCSA determine the minimum number of Mexican carriers that must participate in the demonstration project necessary to yield statistically valid results, FMCSA concurred with the recommendation, but does not agree with our assumption of the universe of carriers likely to engage in long-haul operations in the future. FMCSA believes that the number likely to engage in future operations should be lower than the 775 carriers used in our report, but it did not provide its own assumption of the number of carriers or a target date for doing so.

Response. We consider FMCSA's comments to be responsive. Our recommendation requires FMCSA to determine the minimum number of Mexican carriers that must participate in the demonstration project to yield statistically valid results. One factor involved in this determination will be estimating the number of Mexican carriers likely to conduct long-haul operations in the future. In our view, a reasonable estimate of the number of likely carriers should consider, at a minimum, applicants who had not previously applied but who may elect to do so in the future; applicants who did not fully complete the application process but who might decide to do so in the future, and applicants who completed the application process but declined to participate in the demonstration project.

We recognize that the number of Mexican carriers likely to conduct long-haul operations in the future may be more or less than the assumption presented in our report. Our objectives, as set by Congress, required us to identify a universe of Mexican carriers likely to engage in long-haul operations in the future, and in our opinion, the best indication of that universe is the applications submitted by Mexican carriers for this authority. FMCSA makes a valid point that it is reasonable to exclude from this estimate those applicants unable to pass the safety

review or the vetting requirement. However, FMCSA's comments do not consider the possibility that some carriers not included in the demonstration project would be likely to operate long-haul in the future. For instance, FMCSA stated that approximately 340 carriers were dismissed because their applications were incomplete, but these carriers may submit complete applications in the future, should the border open under NAFTA rules. In addition**,** FMCSA should also consider that 352 grandfathered and certificated carriers were inspected in the United States during the first year of the demonstration project, but 128 have not yet submitted an application for long-haul authority. In order to keep operating should the border open under NAFTA rules, these carriers will be required to complete the application process.[32]

FMCSA also provided comments on our examination of whether the demonstration project participants were representative of Mexican carriers likely to conduct long-haul operation in the future. FMCSA stated that we failed to indicate how certain non-representative business characteristics of the participants were linked to safety. Our objective was not to demonstrate a link to safety, but to identify whether the participants were statistically representative of our defined universe. Similarly, our concerns with the vetting process used as part of the selection process for the demonstration project were on its effect on representativeness of the participants if the process is not used in the future. FMCSA stated that it has no current plans to alter the current vetting process should the border be opened.

We request that FMCSA provide a target date by which it will determine the minimum number of Mexican carriers that must participate in the demonstration project necessary to yield statistically valid results.

Recommendation 1.b. FMCSA concurred with the recommendation to develop a plan for achieving an adequate level of participation if the number currently participating in the demonstration project is less than the number of carriers necessary to yield statistically valid results. FMCSA stated that while it can establish a plan to encourage participation, it cannot guarantee participation in the demonstration project.

Response. We consider FMCSA's comments to be responsive. We request that FMCSA provide a target date for completion of this action.

Recommendation 1.c. FMCSA concurred with the recommendation to provide to the OIG and appropriate congressional committees the calculated minimum sample size and methodology used for the calculation and a plan to achieve adequate participation in the demonstration project as needed.

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[32] 67 FR 12702-12755 (March 19, 2002).

Response. We consider FMCSA's comments to be responsive. We request that FMCSA provide a target date for completion of this action.

Recommendation 2.a. FMCSA concurred with the recommendation to develop and implement a new quality control plan to obtain assurance that each demonstration project truck is checked each time it crosses into the United States.

Response. We consider FMCSA's comments to be responsive. FMCSA acknowledged that its information on the number of border crossings exceeds the number of crossings recorded by the CBP. FMCSA also stated that it is validating 99 percent of CBP's crossing data, but does not identify in its response the percent of crossings that FMCSA is recording that cannot be validated by CBP data. FMCSA stated that it has replaced the manual recording of crossing information with an automated system and will utilize GPS data in its revised plan, which may address this shortfall. We request that FMCSA provide a target date for completion of this action.

Recommendation 2.b. FMCSA concurred with the recommendation to provide a copy of its revised quality control plan to the OIG and appropriate congressional committees.

Response. We consider FMCSA's comments to be responsive. We request that FMCSA provide a target date for completion of this action.

Recommendation 3. FMCSA did not concur with the recommendation to conduct a cost/benefit analysis to determine whether renewing GPS services provides benefits that outweigh the costs. FMCSA stated that it determined that including enhanced features in a new contract for GPS services was not justified because the current system can, through data analysis, identify potential cabotage and hour-of-service violations and an estimate of mileage. FMCSA also stated that it has expanded the utility of GPS data to its new quality control plan.

Response. Although FMCSA did not concur with this recommendation, FMCSA did provide comments that discuss how retaining GPS services would provide additional value relative to its revised quality control plan. We do not dispute that the current GPS service provides data that are useful in identifying potential cabotage and hour-of-service violations, but we are concerned that the benefits of this service may not outweigh the financial cost of the GPS services and the effort that FMCSA must expend to analyze the data. Expanding the use of GPS data to enhance the quality control plan may provide additional benefits that justify the cost. Because we consider FMCSA's check of Mexican carriers at the border to be a primary control to ensure the safety of Mexican trucks and drivers entering the United States, we agree that FMCSA may substitute a revised quality control

plan in its response to recommendations 2.a. and 2.b. that provides evidence that GPS data are a critical element of the plan in lieu of a cost/benefit analysis.

ACTIONS REQUIRED

We consider FMCSA's planned actions reasonable. However, in accordance with Department of Transportation Order 8000.1C, we request that FMCSA provide us with the target dates for the completion of recommendations 1 and 2 within 30 calendar days of the date of this report.

We appreciate the courtesies and cooperation of FMCSA representatives, states, and other organizations contacted during this audit. If you have any questions concerning this report, please call me at (202) 366-5630 or Kerry Barras, the Program Director, at (817) 978-3318.

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EXHIBIT A. SCOPE AND METHODOLOGY

We conducted this performance audit from April through October 2008, with field site visits to the southern border crossings occurring from April through June 2008. We conducted this audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our work included a review of documentation from various sources and interviews with FMCSA and state personnel, the IACP, and the CBP. We also met frequently with members of the Independent Evaluation Panel. We observed FMCSA, CBP, and state procedures to identify and check commercial vehicles and drivers participating in the demonstration project, including North American Standard inspections conducted at the southern border.

To determine whether the demonstration project consisted of a representative and adequate sample, we obtained copies of 775 applications of Mexican carriers for long-haul authority that were made available to us by October 7, 2008. We used those applications to define the universe of Mexico-domiciled carriers likely to engage in long-haul operations in the United States. We recorded certain data submitted on those applications, and conducted statistical testing on seven business characteristics using SPSS statistical software to determine if the characteristics reported by the 29 demonstration project participants showed statistically significant differences from the remaining 746 applicants. All testing was done at the 0.05 significance level. Table 3 summarizes the types of statistical tests we conducted and the results.

Table 3. Results of Statistical Testing Comparing Business Characteristics of Project Participants to All Other Applicants

Characteristics Tested	Tests Used	Statistically Significant Difference Between Groups
Form of business	Chi-square	Yes
Currently operates in the United States	Chi-square	No
Number of vehicles owned by mean	T-Test	No
Number of trailers by mean	T-Test	No
Number of drivers by mean	T-Test	No
Type of registration sought	Chi-square	Yes
Hazmat carrier	Chi-square	No

Source: OIG analysis of applications submitted by 775 Mexican carriers for long-haul authority.

We enhanced data submitted on the 775 applications with additional information FMCSA supplied on the status of the vetting process on the carriers and information on missing DOT numbers found in the Safety and Fitness Electronic Records (SAFER) system. We used a list provided by FMCSA to identify grandfathered and certificated carriers, and FMCSA's Licensing & Insurance database to identify Mexican commercial zone carriers. We adjusted certain groups to minimize the effects of carriers that were identified as being in multiple carrier groups. We eliminated demonstration project participants from the group of grandfathered and certificated carriers and eliminated grandfathered and certificated carriers and all applicants from the group of commercial zone carriers. We obtained all inspection data for FY 2004 through FY 2008 from MCMIS. We used the data to calculate overall out-of-service rates for each of the groups.

We compared the prior out-of-service rates (FYs 2004-2007, through September 5, 2007) of the participants to zone carriers, certificated and grandfathered carriers, all other applicants, and U.S. carriers to determine whether there was any adverse effect regarding safety and to determine whether the participants' out-of-service rates were statistically significantly different from all other applicants as well as other comparison groups. Using SPSS statistical software, we identified, by each carrier group, the total number of driver inspections, out-of-service driver inspections, vehicle inspections, and out-of-service vehicle inspections and calculated an overall driver and vehicle out-of-service rate for each of the groups. We examined whether there were statistically significant differences between groups. Our results are indicated in table 4.

Table 4. Statistically Significant Difference Between Participants and Other Carrier Groups

From October 1, 2003, Through September 5, 2007

Carrier Group	Driver OOS Rate (percent)	Statistically Significant Difference in Driver OOS Rate	Vehicle OOS Rate (percent)	Statistically Significant Difference in Vehicle OOS Rate
Participants	0.3	NA	12.2	NA
All other applicants	1.0	Yes	18.2	Yes
Grandfathered & certificated carriers	1.3	Yes	21.7	Yes
OP-2 zone carriers	1.2	Yes	21.4	Yes
U.S. carriers	7.1	Yes	22.3	Yes

Source: OIG analysis of MCMIS data

We also compared the prior out-of-service rates of applicants that were vetted out of the demonstration project to all other applicants to determine whether those carriers that were vetted out were statistically different safetywise. Using the same methodology, our results are indicated in table 5.

Table 5. Statistically Significant Difference Between Carrier Groups				
From October 1, 2003, Through September 5, 2007				
Carrier Group	**Driver OOS Rate (percent)**	**Statistically Significant Difference in Driver OOS Rate**	**Vehicle OOS Rate (percent)**	**Statistically Significant Difference in Vehicle OOS Rate**
Applicants vetted out of the project	0.7	Yes	15.5	Yes
Applicants not vetted out of the project	1.1		19.1	

Source: OIG analysis of MCMIS data

We also compared the driver and vehicle out-of-service rates for these groups during the first year of the demonstration project. Our results are presented in table 6.

Table 6. Statistically Significant Difference Between Carrier Groups				
From September 6, 2007, Through September 5, 2008				
Carrier Group	**Driver OOS Rate (percent)**	**Statistically Significant Difference in Driver OOS Rate**	**Vehicle OOS Rate (percent)**	**Statistically Significant Difference in Vehicle OOS Rate**
Applicants vetted out of the project	2.0	No	16.5	Yes
Applicants not vetted out of the project	1.8		18.6	

Source: OIG analysis of MCMIS data

Finally, we conducted statistical analyses of the safety performance exhibited during the first year of the demonstration project from September 6, 2007, through September 5, 2008 and compared the performance of the participants to other groups of Mexican carriers and U.S. carriers to determine whether there was any adverse effect regarding safety and whether the participants' out-of-service rates were statistically significantly different from all other applicants as well as other comparison groups. Using the same methodology, our results are indicated in table 7.

Table 7. Statistically Significant Difference Between Participants and Other Carrier Groups				
From September 6, 2007, Through September 5, 2008				
Carrier Group	Driver OOS Rate (percent)	Statistically Significant Difference in Driver OOS Rate From Participants	Vehicle OOS Rate (percent)	Statistically Significant Difference in Vehicle OOS Rate From Participants
Participants	0.5	NA	8.3	NA
All other applicants	2.4	Yes	19.0	Yes
Grandfathered & certificated carriers	3.8	Yes	24.2	Yes
OP-2 zone carriers	1.1	Yes	21.6	Yes
U.S. carriers	6.9	Yes	21.7	Yes

Source: OIG analysis of MCMIS data

We used the out-of-service rates calculated for the demonstration project participants during the first year of the project to calculate the sample size needed to estimate vehicle and driver out-of-service rates for all 775 applicants in our universe. Using a confidence level of 95 percent, a margin of error of +/- 5 percent, and an expected vehicle out-of-service rate of <= 10 percent, we calculated that 118 Mexican carriers must participate in the demonstration project to provide statistically reliable results.

We met frequently with members of the Independent Evaluation Panel to determine whether the Department had established sufficient mechanisms to assess whether the demonstration project was adversely affecting motor carrier safety. Those meetings were held to ascertain whether the Department had provided sufficient resources and information to the panel to facilitate the panel's analysis. We conducted follow-up work with FMCSA to determine what mechanism would be used in place of the panel to determine adverse safety effects.

To assess whether Federal and state monitoring and enforcement activities were sufficient to ensure that participants in the demonstration project complied with all applicable laws and regulations, we conducted various procedures based on each mechanism. During site visits to border crossings, we observed procedures that FMCSA, CBP, and state personnel used to identify and inspect commercial vehicles and drivers participating in the demonstration project. We conducted a walk-through of implementation plan procedures and observed the identification and inspection of demonstration project vehicles and drivers at each border crossing whenever possible. We interviewed FMCSA, CBP, and state personnel at the commercial border crossings to gauge their understanding of procedures

adopted at each border crossing and resolve differences we observed in the implementation plan and actual procedures used by FMCSA and CBP personnel. Using a statistical sample, we tested crossing records for accuracy and completeness at the 10 commercial truck border crossings that participants had used. Our testing provided the results presented in table 8.

Table 8. Results from Testing Crossing Records (Confidence Level is 90 Percent)

Records tested from a universe of 6,246 Records	Sample Size	Lower Confidence Level	Best Estimate	Upper Confidence Level
Estimated proportion of records with supporting documents	331	97.8%	99.1%	100.0%
Estimated total number of records with supporting documents		6,109	6,187	6,243
Estimated proportion of records with accurate supporting documents	328	92.7%	95.2%	97.7%
Estimated total number of records with accurate supporting documents		5,733	5,889	6,045
Estimated proportion of supporting documents with corresponding record	232	91.7%	94.5%	97.2%
Estimated number of supporting documents with corresponding record		5,737	5,910	6,083
Estimated proportion of supporting documents with accurate corresponding record	222	94.8%	96.9%	99.0%
Estimated number of supporting documents with accurate corresponding record		5,597	5,720	5,842
Duplicate records tested from a universe of 104 records	**Sample Size**	**Lower Confidence Level**	**Best Estimate**	**Upper Confidence Level**
Estimated proportion of duplicate records	55	100.0%	100.0%	100.0%
Estimated total number of duplicate records		104	104	104

We judgmentally supplemented our testing of the completeness of FMCSA's crossing records by identifying all inspections listed in FMCSA's MCMIS for Trinity during the period that Trinity was participating in the demonstration project. Because FMCSA policy requires only that a demonstration project truck

with a current Commercial Vehicle Safety Alliance decal be checked and not undergo a full North American Standard inspection when entering the United States at a border crossing, we identified any instances where inspections were performed on a particular day, but for which FMCSA recorded no border crossings. We identified 111 inspections performed on Trinity trucks at Eagle Pass, Texas, during a 6-day period when FMCSA had recorded no truck crossings. FMCSA reviewed our documentation and agreed that the record of Trinity's truck crossings was incomplete for those 6 days. We completed similar judgmental analyses for four additional carriers and found minor discrepancies for three of the carriers and no discrepancies for one carrier.

We obtained access to FMCSA's GPS system and conducted tests to determine whether FMCSA's crossing records were accurately reporting trips beyond the commercial zones. We tested one carrier because during a site visit to the border, drivers working for this carrier indicated that they were dropping their tractors in the commercial zone and picking up a tractor owned by a U.S. carrier to travel to their final destination. At this point, the vehicle would no longer be a demonstration project carrier. In addition, this carrier represented a large percentage of trips recorded by FMCSA as going beyond the zone. We judgmentally selected 41 crossings of this carrier's trucks between March 19 and March 24, 2008, and examined GPS histories of travel in the United States for each truck represented. We were unable to complete an analysis on four of the crossings because of a lack of information. For 15 trips, FMCSA recorded them as not going beyond the commercial zone, and GPS histories supported this for all but one, although this truck did not reach its stated destination. For 22 trips, FMCSA recorded them as going beyond the commercial zone to either Ft. Worth or Houston, Texas. The GPS histories did not support these trips as reaching Ft. Worth or Houston or going beyond the commercial zone. The testing raises questions about the number of trucks that actually traveled beyond the commercial zone. Yearend statistics number this carrier's trips beyond the zone at 392 of a total of 1,443, or about 27 percent of all trips beyond the zone.

Using statistical audit software, we compared CBP crossing data and FMCSA crossing records to assess the reliability of the FMCSA quality control plan and determine whether the initial report, dated March 28, 2008, accurately portrayed results. Because the data did not provide vehicle specific information, such as a vehicle identification number, we sorted both FMCSA and CBP data by the number of crossings logged by each carrier at a particular border crossing on any day and compared the resulting number of crossings per CBP data to the number of crossings per FMCSA data. Overall, we found only a 24.4-percent match between CBP and FMCSA, primarily due to CBP's lack of crossing data. While FMCSA recorded data for 3,939 crossings, CBP recorded data for only 2,896. CBP did not log any crossing data for 7 of the 17 carriers.

Additionally, we reviewed training rosters provided by FMCSA and the IACP to identify the number of law enforcement personnel trained and the states they represented. We obtained data from FMCSA and the DOT warehouse on the production and distribution of educational brochures used to familiarize state and local law enforcement agencies with demonstration project issues, including cabotage, operating authority, and English language proficiency, and a brochure advertising the available training. We also telephoned a small number of trainees to verify the course curriculum and obtain their opinion on the usefulness of the course.

We interviewed FMCSA Division personnel and state personnel responsible for submitting convictions of Mexican drivers to the MCDB to ascertain the status of corrective action plans. We conducted a site visit to the FMCSA contractor that maintains the MCDB to observe operations. Site visits were also made to the four border states, either by this audit team or an audit team conducting a related audit. We obtained convictions of Mexican drivers in the United States that were submitted to the MCDB during fiscal year 2007 and the first quarter of fiscal year 2008 and compared driver's license numbers of drivers participating in the demonstration project to those convictions. We found that 12 convictions were posted for nine drivers during fiscal year 2007 and the first quarter of fiscal year 2008 although none of the convictions were in categories that would result in disqualification based on U.S. regulations. This analysis was limited by the quality of the MCDB data that we received.

We conducted interviews with FMCSA personnel regarding Trinity's withdrawal from the demonstration project and examined documents that Trinity submitted to FMCSA. We used inspection data in MCMIS to determine the number of inspections Trinity underwent during the year prior to the start of the demonstration project and during Trinity's participation in the project. We used MCMIS data to identify and count violations, out-of-service violations, and the number of motorized vehicles and trailers that Trinity used. We also used the data to calculate out-of-service rates and project the effect of Trinity's participation on the safety performance during the first year of the demonstration project, if it had remained in the project.

EXHIBIT B. PRIOR AUDIT COVERAGE

Prior OIG Audits

Our interim report, issued in March 2008, identified three issues at the 6-month point in the project.

First, fewer carriers and vehicles than expected have participated so far in the project. As a result, no reliable statistical projections regarding safety attributes were possible at the midpoint of the project, although certain characteristics of the Mexican carriers participating in the project, such as the number of vehicles and drivers, may be representative of a larger group of carriers that have previously applied for long-haul authority.

Second, the Department had established and was supporting an independent panel to assess any adverse safety impacts from the project although the panel was concerned that it would not have sufficient data to draw meaningful conclusions at the conclusion of the project's initial 12-month period.

Third, FMCSA had established and enhanced mechanisms for state and Federal monitoring and enforcement of safety rules, and FMCSA records showed that about 3,700 checks had been done at the border. However, a key quality control measure promised to Congress had not been implemented. This control measure was designed to ensure that checks of all Mexican drivers and vehicles crossing the border were occurring as planned. Without this quality control measure, FMCSA did not have assurance that it had checked every Mexican truck and driver that was participating in the project every time they cross the border into the United States.

Additional OIG reports issued on this subject area are listed below.

- OIG Report Number MH-2008-081, "Report on the Scope and Methodology of FMCSA'S Review of Canadian/Mexican Compliance with Federal Commercial Motor Vehicle Safety Standards," September 24, 2008.

- OIG Report Number MH-2008-040, "Interim Report on NAFTA Cross-Border Trucking Demonstration Project," March 10, 2008.

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

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

- OIG Report Number MH-2005-032, "Follow-Up Audit of the Implementation of the North American Free Trade Agreement's Cross-Border Trucking Provisions," January 3, 2005.

- OIG Report Number MH-2003-041, "Follow-Up Audit on the Implementation of Commercial Vehicle Safety Requirements at the U.S.-Mexico Border," May 16, 2003.

- OIG Report Number MH-2002-094, "Implementation of Commercial Vehicle Safety Requirements at the U.S.-Mexico Border," June 25, 2002.

- OIG Report Number MH-2001-096, "Motor Carrier Safety at the U.S.-Mexico Border," September 21, 2001.

- OIG Report Number MH-2001-059, "Interim Report on Status of Implementing the North American Free Trade Agreement's Cross-Border Trucking Provisions," May 8, 2001.

- OIG Report Number TR-2000-013, "Mexico-Domiciled Motor Carriers," November 4, 1999.

- OIG Report Number TR-1999-034, "Motor Carrier Safety Program for Commercial Trucks at U.S. Borders," December 28, 1998.

EXHIBIT C. PENDING LITIGATION AND ACTIONS THAT MAY IMPACT CONTINUATION OF DEMONSTRATION PROJECT

In August 2007, the Sierra Club and other parties filed an appeal in the U.S. Court of Appeals for the 9th Circuit to stop the demonstration project on several grounds.[33] The challenge to the demonstration project also includes an issue concerning the interpretation of an appropriations restriction in the fiscal year 2008 Consolidated Appropriations Act.[34]

The December 2007, fiscal year 2008 Consolidated Appropriations Act stated:

> None of the funds made available under this Act may be used to establish a cross-border motor carrier demonstration program 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 to restrict funding only to future demonstration projects. Some members of Congress and outside parties contended that the provision restricted funding for the current, ongoing demonstration project as well.

On March 10, 2008, Senator Byron L. Dorgan of the Senate Committee on Commerce, Science, and Transportation and three other congressmen asked the Government Accountability Office (GAO) to review the Department's action to determine whether continuation of the project violated the Antideficiency Act. At this time, we do not have information on the outcome of GAO's review.

Oral argument on the Sierra Club case was held in February 2008, and at the argument, the interpretation of the appropriations restrictions was specifically addressed by the court. A decision is pending.

[33] Sierra Club, et al. v. Department of Transportation, et al., No. 07-73415 (9th Circuit filed August 29, 2007).
[34] Pub. L. No. 110-161, Division K, Title I, § 136 (2007).

EXHIBIT D. SITE INSPECTIONS

We conducted audit work at 11 of 25 commercial truck border crossings. Our selection included all 10 border crossings that had been used by demonstration project trucks as of February 23, 2008. We included an eleventh border crossing due to its proximity to another site.

Border Crossing	Location
Bridge of the Americas	El Paso, TX
Calexico-East	Calexico, CA
Columbia Solidarity Bridge III	Laredo, TX
Piedras Negras - Camino Real International Bridge II	Eagle Pass, TX
Otay Mesa Cargo North	Otay Mesa, CA
Rio Grande City - Camargo Bridge	Rio Grande City, TX
San Luis - San Luis Rio Colorado	San Luis, AZ
Santa Teresa - San Jeronimo	Santa Teresa, NM
Tecate	Tecate, CA
World Trade Bridge	Laredo, TX
Ysleta International Bridge	El Paso, TX

EXHIBIT E. MAJOR CONTRIBUTORS TO THIS REPORT

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APPENDIX. MANAGEMENT COMMENTS

U.S. Department
Of Transportation

**Federal Motor Carrier
Safety Administration**

Memorandum

Subject: **INFORMATION:** Response to the Office of the Inspector General's Draft Report "Status Report of NAFTA Cross-Border Trucking Demonstration Project" No. 08M3005M000

Date: JAN **16 2009**

From John H. Hill
Administrator

Reply to Attn: of William Quade
MC-E

To: Joseph W. Comé
Assistant Inspector General
for Highway and Transit Audits

The Federal Motor Carrier Safety Administration (FMCSA) appreciates the opportunity to review the draft report titled, "Status Report of NAFTA Cross-Border Trucking Demonstration Project." The Agency would like to recognize the effort put forward by the Office of the Inspector General (OIG) in development of this report and appreciates the opportunity to respond to its recommendations.

While in large part the FMCSA agrees with the recommendations proposed by the OIG, we believe it necessary to clarify some aspects which may have contributed to the development of the recommendations. For example, the OIG report states, "…the Global Positioning System (GPS) acquired for monitoring truck movements had limited capabilities." While the GPS system acquired by FMCSA for this project does not have some advanced features, such as geo-fencing and automated mileage reporting, the GPS system provides the data necessary to accomplish its intended functions, namely detecting potential violations of the hours-of-service regulations and cabotage restrictions and providing a basis for FMCSA to estimate the mileage of trucks operating in the demonstration project. FMCSA is also using the GPS system as an additional quality control measure to ensure that we meet our voluntary commitment to check every Mexican truck every time it crosses the border into the United States.

The data collected by the GPS system records the time and position of each vehicle. Analysis of the data can show when and where vehicles cross into the United States and identify when the vehicle travels beyond the border commercial zones. Further, analysis of the position "pings" reveals the approximate number of miles any Mexican truck engaging in

long haul operations travels while in the United States. FMCSA acknowledges that geo-fencing and automated mileage reporting would be useful, but has determined the extra costs for these enhancements were not justified because the current system accomplishes our goals.

The OIG report also addresses whether the 29 participant motor carriers are representative of those carriers "likely to engage in long haul operations." The report assumes that the 775 motor carriers that submitted an application for long haul operating authority are "likely" to engage in long haul operation. The FMCSA believes this assumption is in error.

The purpose of the Demonstration Project is to demonstrate that Mexican motor carriers that meet FMCSA's established safety requirements can safely operate in the United States beyond the border commercial zones. FMCSA is clearly not obligated to ensure that carriers that do not meet its safety requirements for receiving provisional long-haul operating authority, or are otherwise legally ineligible to receive such authority, are "represented" in the Project because we have good reason to question whether such carriers could operate safely during the Project and because such carriers would, in any event, not be authorized to engage in long-haul operations when a full border opening is implemented. Therefore, it is entirely reasonable to exclude carriers that cannot or will not meet FMCSA's safety standards from the population of carriers deemed "likely to engage in long-haul operations." These carriers fall into the following categories:

1. Approximately 340 were dismissed because their applications were incomplete. Without a complete application, an applicant would not receive long haul operating authority and could not legally operate beyond the border commercial zones in the United States.

2. 138 carriers were found to be ineligible for the Demonstration Project. Reasons for ineligibility include alleged security issues, transportation of passengers, transportation of hazardous materials; and unresolved safety issues (including unpaid penalties to FMCSA).

3. Approximately 297 carriers could not have their applications further processed by FMCSA either because their contact information was out of date and we were unable to find any new contact information or because we contacted the applicant, but the applicant declined to participate in the Project, effectively withdrawing itself from consideration for the Project.

4. Of the 100 remaining carriers that have undergone the required Pre-Authorization Safety Audit (PASA), 32 failed to successfully complete the PASA and were denied long-haul operating authority. In other words, approximately one-third of motor carriers that submit a complete application could be expected to fail the PASA, be denied operating authority, and be ineligible to engage in long haul operations in the United States.

5. Of the 68 motor carriers that have successfully completed the PASA, only 30 filed the appropriate insurance forms required to obtain long haul operating authority. Without such operating authority, the remaining 38 motor carriers are not eligible to perform long haul transportation in the United States.

As described above, a large number of Mexican carrier applicants have not complied with FMCSA requirements for conducting long-haul operations into the United States and, accordingly, should not be deemed "likely to engage in" such operations whether they are part of the Demonstration Project or a full border opening.

The OIG report also notes differences in the business characteristics of the 29 motor carriers that were issued operating authority compared to the 775 applicants with respect to the form of ownership and type of registration (operating authority) sought. The report fails to indicate how these characteristics relate to safety. On the other hand, the 29 motor carriers bear similar characteristics in safety-related areas, such as number of vehicles and drivers.

The OIG report expresses concern about the vetting process and states, "Accordingly, if criminal vetting procedures are not applied in the future, the 138 carriers that were eliminated from project consideration may be eligible to conduct long haul operations… ." The FMCSA offers the following observations.

1. As noted above, not all of the 138 motor carriers were vetted for alleged criminal activities. Some carriers were eliminated from consideration because they transport hazardous materials or passengers. Section 6901(d) of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, requires FMCSA to establish separate demonstration projects for these carriers. As a result, these carriers were not eligible to participate in the current project, which is limited to motor carriers transporting non-hazardous property.

2. FMCSA has no current plans to alter the current vetting process in the case of a full border opening. As such, only carriers that pass the vetting process should be considered as likely to engage in long haul operations in the United States.

The OIG report also voiced concerns with respect to the quality control plan designed to ensure that every participant carrier's vehicle is checked as it enters the United States. There is no statutory or regulatory requirement obligating FMCSA to check each vehicle every time it enters the United States. This practice is intended to alleviate concerns regarding the frequency of inspections. As such, FMCSA implemented a policy and developed a quality control plan to ensure the effectiveness of the policy.

The report's concerns about the quality control plan center around the completeness and randomness of the data used in the quality control plan. FMCSA offers the following observations:

1. While FMCSA acknowledges that its information on the number of crossings exceeds the number of commercial crossings recorded by U.S. Customs and Border Protection (CBP), FMCSA supplements its quality control analysis with data from the GPS system.

Appendix. Management Comments

2. The manual crossing data collection process originally contemplated has been replaced with an automated process. Thus, the efficiency and comprehensiveness of FMCSA's crossing data has been enhanced.

3. FMCSA's quality control plan calls for an analysis of 10 percent of CBP's commercial crossing data. In practice, FMCSA is analyzing 100 percent of the CBP data and can validate approximately 99 percent of the crossings.

In addition to the concerns about the GPS system, quality control plan, and carrier sample size/composition, FMCSA would like to offer the following points of clarification:

1. Transportes Francisca Burgos Vizcarra did operate in the United States after its operating authority was revoked. However, FMCSA was able to detect this violation within days after it occurred and the motor carrier was sanctioned. The FMCSA assessed two administrative penalties totaling $16,700 and these penalties are being paid by the carrier.

2. With respect to the Independent Evaluation Panel's statement concerning the 11 critical safety violations, the OIG report failed to include FMCSA's response to the Panel regarding this issue. The 11 critical safety violations were intended to provide a measure that the evaluation panel could use to compare the performance of Mexico-domiciled carriers to U.S. carriers. FMCSA never intended to fail demonstration project carriers for these violations and has no regulatory basis for applying such criteria in a PASA.

FMCSA's response to the recommendations put forward in this report is detailed below.

RECOMMENDATIONS AND RESPONSES

RECOMMENDATION 1a. Determine the minimum number of Mexican carriers that must participate in the demonstration project necessary to yield statistically valid results. In order to calculate this number, FMCSA must address, at a minimum:

- the definition of the universe of Mexican carriers likely to travel beyond the commercial zones for which estimates are to be made;
- the sampling unit for which measurements are to be made, such as drivers, vehicles, trucks, or carriers;
- the attributes or variables to be estimated or compared, such as driver out-of-service rates, vehicle out-of-service rates, or crash rates;
- the confidence level; and
- the margin of error that these estimates should achieve.

Response: FMCSA concurs with the recommendation. However as stated above, FMCSA does not agree with the OIG's estimate of the universe of carriers likely to engage in long haul operations.

RECOMMENDATION 1b. Develop a plan for achieving an adequate level of participation if the current number of Mexican carriers participating in the project is less than the number of carriers necessary to yield statistically valid results.

Response: The FMCSA concurs with this recommendation. However, while FCMSA can establish a plan to encourage the participation of more motor carriers in the demonstration project, FMCSA cannot guarantee the participation of any other motor carriers in the demonstration project. From the perspective of a motor carrier, participation in the demonstration project is a business decision. Economic conditions, continued political opposition to the demonstration project, as well as other factors affecting profitability will continue to determine whether motor carriers are willing to invest the resources necessary for participation.

RECOMMENDATION 1c. Provide to the OIG and appropriate congressional committees, the calculated minimum sample size, the methodology used to calculate the minimum sample size, and the plan to achieve adequate participation of Mexican carriers in the demonstration project as needed.

Response: The FMCSA concurs with this recommendation.

RECOMMENDATION 2a. Obtain assurance that every demonstration truck is checked every time it crosses into the United States by developing and implementing a new quality control plan.

Response: The FMCSA concurs with this recommendation. The FMCSA quality control plan has evolved during the demonstration project as the Agency gained experience with the data collected by CPB. The current practices are not reflected in the original plan transmitted to Congress on September 6, 2007. FMCSA will update the quality control plan to reflect current practices.

RECOMMENDATION 2b. Obtain assurance that every demonstration truck is checked every time it crosses into the United States by providing to the OIG and appropriate congressional committees a complete description of this plan and the procedures used to implement the plan.

Response: FMCSA concurs with this recommendation. Although this policy is not required by statute or regulation, FMCSA agrees to provide a copy of its quality control plan and data to the OIG and appropriate congressional committees.

RECOMMENDATION 3. Conduct a cost/benefit analysis to determine whether renewing GPS services provides benefits that outweigh the costs.

Response: The FMCSA does not concur with this recommendation. The FMCSA has instituted quality control policies that utilize the GPS data to monitor demonstration project participants for potential hours-of-service and cabotage violations. The GPS data are also being used to monitor our checks of every vehicle, every time, and the data concerning the location of these trips will be used to estimate the mileage traveled by carriers in the demonstration project. Therefore, the GPS data are a critical part of FMCSA's oversight regimen and we see no value in conducting a cost/benefit analysis.

Appendix. Management Comments

If you need additional information or clarification, please contact William Quade, Associate Administrator for Enforcement and Program Delivery, at 202-366-2172.

Appendix. Management Comments

The following pages contain textual versions of the charts and figures found in this document. These pages were not in the original document but have been added here to accommodate assistive technology.

Status Report on NAFTA Cross-Border Trucking Demonstration Project

Section 508 Compliant Presentation

Table 1. Comparison of Out-of-Service Rates of Project Participants To Other Carrier Groups, From September 6, 2007, Through September 5, 2008

This table demonstrates a comparison of both driver and vehicle out-of-service rates for the following four motor carrier groups: project participants, commercial zone carriers, grandfathered and certificated carriers, and United States carriers. The OIG calculated these rates by analyzing data in FMCSA's Motor Carrier Management Information System. The results of the two separate comparisons are as follows:

Driver Out-of-Service Rate Comparison

Motor Carrier Group	Driver Out-of Service Rate
Project Participants	0.46
Commercial Zone	1.08
Grandfathered and Certificated	3.79
United States	6.94

Vehicle Out-of-Service Rate Comparison

Motor Carrier Group	Vehicle Out-of Service Rate
Project Participants	8.29
Commercial Zone	21.60
Grandfathered and Certificated	24.23
United States	21.72

Figure 1. Driver Out-of-Service Rates by Comparison Groups, Fiscal Years 2004-2007

Figure 1 is a vertical column graph that depicts the driver out-of-service rates for each of five motor carrier groups (United States carriers, commercial zone carriers, grandfathered and certificated carriers, applicant carriers, and participant carriers) during fiscal years 2004 through 2007. The OIG calculated these out-of-service rates by analyzing data in FMCSA's Motor Carrier Management Information System. Our analysis of FY 2007 utilized data through September 5, 2007.

The following are each of the carrier's driver out-of-service rates by fiscal year.

Carrier Group	FY04	FY05	FY06	FY07
United States	6.61	6.91	7.32	7.21
Commercial Zone	1.56	1.14	1.26	0.98
Grandfathered and Certificated	0.98	1.10	1.38	1.55
All Other Applicants	0.99	0.82	1.11	1.14
Project Participants	0.35	0.23	0.29	0.23

Figure 2. Vehicle Out-of-Service Rates by Comparison Groups, Fiscal Years 2004-2007

Figure 2 is a is a vertical column graph that depicts the vehicle out-of-service rates for each of five motor carrier groups (United States carriers, commercial zone carriers, grandfathered and certificated carriers, applicant carriers, and participant carriers) during fiscal years 2004 through 2007. The OIG calculated these out-of-service rates by analyzing data in FMCSA's Motor Carrier Management Information System. Our analysis of FY 2007 utilized data through September 5, 2007.

The following are each of the carrier's vehicle out-of-service rates by fiscal year.

Carrier Group	FY04	FY05	FY06	FY07
United States	23.07	22.55	22.32	21.71
Commercial Zone	21.99	20.82	21.30	21.91
Grandfathered and Certificated	20.78	20.81	21.84	23.41
All Other Applicants	17.76	17.80	18.25	18.74
Project Participants	13.44	13.16	12.31	11.02

Table 2. Impact of Trinity's Withdrawal on the Demonstration Project Out-of-Service Rate Versus U.S. Carriers Out-of-Service Rates

Table 2 demonstrates a comparison of the actual out-of-service rate for project participants to an estimate of what the project participants' out-of-service rate would have been if Trinity had not withdrawn from the demonstration project, and the actual out-of service rate for United States carriers. These rates are based on out-of-service inspections for the time period September 6, 2007, through September 5, 2008.

The following is the comparison of driver out-of-service rates.

Rate Reviewed	Driver Out-of-Service Rate
Actual Rate, Demonstration Project Participants	0.46
Estimated rate if Trinity had not withdrawn	0.39
Actual Rate, United States Carriers	6.94

The following is the comparison of vehicle out-of-service rates.

Rate Reviewed	Vehicle Out-of-Service Rate
Actual Rate, Demonstration Project Participants	8.29
Estimate, if Trinity had not withdrawn	9.17
Actual Rate, United States Carriers	21.72

Table 3. Results of Statistical Testing Comparing Business Characteristics of Project Participants to All Other Applicants

This table summarizes the results of statistical testing to determine whether the participants in the demonstration project were statistically significantly different from all other applicants for long-haul authority, in terms of certain business characteristics.

Characteristics Tested	Test Used	Results
Form of business	Chi-square Test	Statistically Significantly Different
Currently operates in the United States	Chi-square Test	Not Statistically Significantly Different
Number of vehicles owned by mean	T-Test	Not Statistically Significantly Different
Number of trailers by mean	T-Test	Not Statistically Significantly Different
Number of drivers by mean	T-Test	Not Statistically Significantly Different
Type of registration sought	Chi-square Test	Statistically Significantly Different
Hazmat carrier	Chi-square Test	Not Statistically Significantly Different

Table 4. Statistically Significant Difference Between Participants and Other Carrier Groups, From October 1, 2003, Through September 5, 2007

This table summarizes the results of statistical analyses to determine whether the driver and vehicle out-of-service rates measured over fiscal years 2004 through 2007 for the demonstration project participants were or were not statistically significantly different from the rates during that same period for three other Mexican motor carrier groups and United States carriers.

The following are the results of the driver out-of-service rate analysis.

Carrier Group	Out-of-Service Rate	Results of Statistical Test
Project Participants	0.3	Not Applicable
All Other Applicants	1.0	Statistically Significantly Different
Grandfathered and Certificated	1.3	Statistically Significantly Different
Commercial Zone	1.2	Statistically Significantly Different
United States	7.1	Statistically Significantly Different

The following are the results of the vehicle out-of-service rate analysis.

Carrier Group	Out-of-Service Rate	Results of Statistical Test
Project Participants	12.2	Not Applicable
All Other Applicants	18.2	Statistically Significantly Different
Grandfathered and Certificated	21.7	Statistically Significantly Different
Commercial Zone	21.4	Statistically Significantly Different
United States	22.3	Statistically Significantly Different

Table 5. Statistically Significant Difference Between Carrier Groups, from October 1, 2003, Through September 5, 2007

This table summarizes the results of statistical analyses to determine whether driver and vehicle out-of-service rates measured from fiscal year 2004 through fiscal year 2007 for applicants that were vetted out of the demonstration project were or were not statistically significantly different from the rates during that same period for applicants that were not vetted out of the project.

The following are the results of the driver out-of-service rate analysis.

Carrier Group	Out-of-Service Rate	Results of Statistical Test
Applicants vetted out	0.7	Not Applicable
Applicants not vetted out	1.1	Statistically significantly different

The following are the results of the vehicle out-of-service analysis.

Carrier Group	Out-of-Service Rate	Results of Statistical Test
Applicants vetted out	15.5	Not Applicable
Applicants not vetted out	19.1	Statistically significantly different

Table 6. Statistically Significant Difference Between Carrier Groups From September 6, 2007, Through September 5, 2008

This table summarizes the results of statistical analyses to determine whether driver and vehicle out-of-service rates measured from September 6, 2007, through

September 5, 2008, for applicants that were vetted out of the demonstration project were or were not statistically significantly different from the rates during that same period for applicants that were not vetted out of the project.

The following are the results of the driver out-of-service rate analysis.

Carrier Group	Out-of-Service Rate	Results of Statistical Test
Applicants vetted out	2.0	Not Applicable
Applicants not vetted out	1.8	Not statistically significantly different

The following are the results of the vehicle out-of-service rate analysis.

Carrier Group	Out-of-Service Rate	Results of Statistical Test
Applicants vetted out	16.5	Not Applicable
Applicants not vetted out	18.6	Statistically significantly different

Table 7. Statistically Significant Difference Between Participants and Other Carrier Groups, From September 6, 2007, Through September 5, 2008

This table summarizes the results of statistical analyses to determine whether the driver and vehicle out-of-service rates measured from September 6, 2007, through September 5, 2008, for the demonstration project participants were statistically significantly different from the rates during the same period for three other Mexican carrier groups and United States carriers.

The following are the results of the driver out-of-service rate analysis.

Carrier Group	Out-of-Service Rate	Results of Statistical Test
Project Participants	0.5	Not Applicable
All Other Applicants	2.4	Statistically Significantly Different
Grandfathered and Certificated	3.8	Statistically Significantly Different
Commercial Zone	1.1	Statistically Significantly Different
United States	6.9	Statistically Significantly Different

The following are the results of the vehicle out-of-service rate analysis.

Carrier Group	Out-of-Service Rate	Results of Statistical Test
Project Participants	8.3	Not Applicable
All Other Applicants	19.0	Statistically Significantly Different
Grandfathered and Certificated	24.2	Statistically Significantly Different
Commercial Zone	21.6	Statistically Significantly Different
United States	21.7	Statistically Significantly Different

Table 8. Results from Testing Crossing Records (Confidence Level is 90 Percent)

This table summarizes the results of accuracy and completeness testing of demonstration project border crossing records and supporting documentation for those records at 10 commercial border crossings we visited. From a universe of 6,246 crossing records, the table provides statistical estimates of the proportion and number of records resulting from four tests that we conducted. The four tests we conducted were: number of records with supporting documents, number of records with accurate supporting documents, number of documents with corresponding records, and number of documents with accurate corresponding records. In addition, the table shows the proportion and number of duplicate border crossing records that exist based on testing a universe of 104 duplicate records that we identified before our site visits.

The following are the results of our testing 331 border crossing records to determine the proportion and number of records with supporting documents.

Test Results	Lower Confidence Level	Best Estimate	Upper Confidence Level
Proportion	97.8 percent	99.1 percent	100.0 percent
Number	6,109	6,187	6,243

The following are the results of testing 328 border crossing records to determine the proportion and number of records with accurate supporting documents.

Test Results	Lower Confidence Level	Best Estimate	Upper Confidence Level
Proportion	92.7 percent	95.2 percent	97.7 percent
Number	5,733	5,889	6,045

The following are the results of testing 232 supporting documents to determine the proportion and number of documents recorded as border crossing records.

Test Results	Lower Confidence Level	Best Estimate	Upper Confidence Level
Proportion	91.7 percent	94.5 percent	97.2 percent
Number	5,737	5,910	6,083

The following are the results of testing of 222 supporting documents to determine the proportion and number of documents that were recorded accurately as border crossing records.

Test Results	Lower Confidence Level	Best Estimate	Upper Confidence Level
Proportion	94.8 percent	96.9 percent	99.0 percent
Number	5,597	5,720	5,842

The following are the results of testing of 55 duplicate entries to determine the proportion and number of border crossing records that were duplicate entries.

Test Results	Lower Confidence Level	Best Estimate	Upper Confidence Level
Proportion	100.0 percent	100.0 percent	100.0 percent
Number	104	104	104