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Status of Mexican Trucks in the United States: Frequently Asked Questions

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Introduction

In the North American Free Trade Agreement (NAFTA), which took effect in January 1994, the United States and Mexico agreed to allow each other's trucks to carry goods across the border to make deliveries anywhere inside their respective countries. This provision was controversial in the United States, and a trial program begun in September 2007 by the George W. Bush Administration was defunded by Congress in March 2009. Mexico imposed tariffs on certain U.S. goods in response to the program's termination, as permitted by NAFTA. After bilateral negotiations, the Obama Administration announced a new pilot program to allow long-haul Mexican trucks into the United States in April 2011.[1] The first Mexican truck with long-haul operating authority crossed the border in October 2011.

This report answers frequently asked questions about the pilot program permitting Mexican trucks into the United States.

How Many Mexican Trucks Are Participating in the Pilot Program?

As of December 2013, there were 14 Mexico-domiciled carriers with active long-haul operating authority in the pilot program; 9 of these had been granted permanent operating authority, and 5 had provisional operating authority, although just 2 Mexican carriers accounted for most of the border crossing activity.[2] Two additional carriers were in the process of applying for long-haul operating authority.[3] The 14 approved carriers have used about 45 trucks to make nearly 10,000 border crossings since October 2011. To put this number in context, on average about 14,000 trucks cross the border from Mexico each day.[4]

Most (83%) of the U.S. mileage by Mexican trucks in the long-haul pilot has been in the four U.S. border states, and overwhelmingly in just Texas and California. Only 17% of the mileage has been beyond the border states.[5] Florida, Louisiana, and Arkansas are the three non-border states where Mexican trucks have accumulated the most mileage.

Relative to rail and ocean shipping, trucking is comparatively costly for long-distance shipments, even with a driver paid according to Mexican wage scales. This is likely why most Mexican trucks in the pilot program are not travelling beyond the border states. The results of the Bush pilot program of 2007-2009 also indicated that relatively few Mexican trucks would travel far into the United States. Under that program, Mexican participants made 12,516 trips into the United States. Of these, 1,439, or 11.5%, were to destinations beyond a commercial zone along the border. Only 4% of these long-haul trips (a total of 80 trips) were to destinations beyond a border state. Almost all of the trips beyond the border commercial zone were to destinations

[1] See 76 *Federal Register* 20807-20819, April 13, 2011, and 76 *Federal Register* 40420-40439, July 8, 2011.

[2] http://www.fmcsa.dot.gov/intl-programs/trucking/trucking-program.aspx.

[3] http://www.fmcsa.dot.gov/intl-programs/trucking/reports.aspx.

[4] http://transborder.bts.gov/programs/international/transborder/TBDR_BC/TBDR_BC_Index.html.

[5] http://www.fmcsa.dot.gov/intl-programs/trucking/aggregate_charts.aspx.

within Texas and California. In more than 30 states no Mexican project participant was identified at roadside inspections during the 18 months of the Bush program.[6]

The relatively few Mexican trucks hauling goods far beyond the border states are likely carrying highly valuable and/or time-sensitive goods. For example, new cars and trucks and auto parts are significant imports from Mexico. Fresh produce (tomatoes, peppers, cucumbers) is also a major import from Mexico and is carried in trucks even for long distances because of refrigeration requirements. Mexican beer is another product that could likely be carried by truck.[7] Electronic equipment, such as televisions, computers, appliances, and cell phones, also has high value-to-weight ratios and thus might be efficiently trucked from Mexico to distant parts of the United States.[8] In some cases, sunk investments in warehouses near the border for packaging or transloading operations could reduce the attractiveness of utilizing Mexican long-haul trucks in the United States.

In many cases, using a Mexican truck to carry shipments far from the U.S. border will be economically viable only if the carrier is able to pre-arrange a backhaul load from the United States to Mexico. Car haulers and refrigerated carriers both use specialized equipment, which narrows their backhaul market considerably. The United States exports new cars to Mexico, but in far smaller quantities than it imports (it exports more parts, which would be carried in "dry van" trailers). Refrigerated carriers prefer finding, if not refrigerated cargo, at least cargo that requires temperature protection for backhauls.[9] While the United States exports meat, dairy, fruit, and other temperature-sensitive products to Mexico, these products may not be shipped from the vicinity of destinations for imported produce. Also, produce is imported from Mexico seasonally, with the peak season from November through January, when fewer U.S. agricultural products may be available for export to Mexico. The difficulty of arranging backhauls is likely to slow the expansion of Mexican truckers within the United States. In an interview about the pilot program, one of the two Mexican carriers with the largest number of crossings into the United States indicated that it only selected routes into the United States where it could find backhaul loads.[10]

How Does the Obama Pilot Work?

The Obama Administration's pilot program for Mexican long-haul trucks proceeds in three stages. Stage one begins when a Mexican firm is issued a provisional operating authority by the U.S. Federal Motor Carrier Safety Administration (FMCSA) after completing a pre-authorization safety audit.[11] This audit, among other things, includes checking the carrier's records for driver

[6] Independent Evaluation Panel Report to the U.S. Secretary of Transportation, *U.S.-Mexico Cross-Border Trucking Demonstration Project*, October 31, 2008, pp. xvii and 13.

[7] Railroads could carry a larger share of beer compared to produce because beer merely needs protection from temperature extremes and has a much longer shelf life. Railroads tend to carry harder, less tender produce, such as root vegetables and apples. Further information on products traded with Mexico, their mode of travel, and U.S. origins and destinations is available from the U.S. Department of Transportation (DOT), Office of Freight Management and Operations, Freight Analysis Framework. However, publicly available import data often do not distinguish between the location of the importer of record (the company's headquarters) and the actual destination of an import shipment.

[8] "U.S. Fleet Execs See Growing Potential in Mexico As Nation's Factory Sector Gains Sophistication," *Transport Topics*, June 1, 2009, p. 1.

[9] Some products do not need refrigeration, just an insulated trailer for protection from freezing or extreme heat.

[10] "Michael Hissam: NAFTA Trucking Program in Effect," *El Paso Times*, August 25, 2013.

[11] 49 C.F.R. part 365 describes the audit process.

drug and alcohol testing, hours-of-service compliance, Mexican commercial driver's licenses, and ability to obtain U.S. insurance, as well as testing each driver's English proficiency and inspecting each vehicle that will be participating in the pilot. During stage one, the Mexican carrier's trucks and drivers are inspected each time they enter the United States for at least three months. If the carrier does not receive at least three inspections during the initial three months, stage one is extended.

After a successful FMCSA evaluation of the carrier's safety during stage one, the carrier proceeds to stage two. In stage two, the carrier's trucks are inspected at the border at the same rate as other Mexican trucks, which are restricted to the border commercial zone. During stage two, FMCSA continues to monitor the carrier's safety performance. Within 18 months of issuing the provisional operating authority, FMCSA conducts a compliance review of the Mexican carrier. If the Mexican carrier receives a satisfactory rating and has no pending enforcement or safety improvement actions, the carrier receives permanent operating authority, beginning stage three after it has operated at least 18 months under provisional authority. (Carriers that participated in the prior Bush Administration pilot program have that time credited toward their 18 months.) To maintain permanent authority during stage three, the Mexican carrier must comply with all FMCSA safety regulations and renew its safety inspection of vehicles every 90 days for the remainder of the three-year pilot program. When the pilot program concludes, the Mexican carrier can convert its permanent authority to standard permanent authority similar to that of U.S.-based carriers.

The Obama pilot began in October 2011 and is scheduled to conclude in October 2014. FMCSA calculated that 4,100 inspections over three years will be needed to produce sufficient data to validate the results of the pilot. As of December 1, 2013, 4,115 inspections of Mexican trucks participating in the pilot had been conducted. However, just two Mexican carriers account for 85% of these inspections, raising a question of whether the inspection data will be a representative sample.[12]

How Does the Obama Pilot Differ from the Bush Program?

Under the Bush program, Mexican trucks did not undergo a "full inspection" (as defined in regulation), but were "checked" to see whether the carrier had passed a pre-authority safety audit (by displaying a special decal) and whether the driver had a valid license and was proficient in English. The Obama Administration's pilot requires, during an initial period of at least three months, full inspections of all participating long-haul Mexican trucks when they arrive at the border.

The Bush program anticipated the installation of global positioning system (GPS) devices on Mexican trucks to monitor their travel in the United States. The Obama pilot incorporates not only GPS devices but also electronic onboard recorders (EOBRs) to enforce driver hours-of-service limits and to track the trucks' movements inside the United States.

[12] See discussion under "Statistical Validity" at 76 FR 40435, July 8, 2011.

The Bush program, limited to 100 carriers, would have used crash data to determine the safety of Mexican long-haul trucks. The Obama plan has no limit on the number of Mexican carriers and uses roadside inspection data rather than crash data to determine the safety of Mexican trucks.

The other, more numerous, safety requirements for long-haul Mexican trucks in the Obama plan are items continued from the prior Bush Administration plan.[13]

Why Grant Mexican Trucks Long-Haul Authority?

In NAFTA, the United States and Mexico agreed to allow each other's trucks to make deliveries from Mexico into the United States and vice versa. The intent is to reduce the cost of truck transportation between the two countries, thereby making trade more efficient. Without long-haul authority, Mexican trucks are limited to the commercial zone around U.S. border towns and cities. The commercial zones range from about 3 to 25 miles inside the United States.[14] A shipment from Mexico to a U.S. point beyond the commercial zones must be transferred from a Mexican truck to a U.S. truck in the vicinity of the border, raising the cost of transportation.

Can U.S. Truckers Operate in Mexico?

Before the Bush pilot program, Mexico did not allow U.S. trucks anywhere in Mexico. Under the Bush pilot program, 10 U.S. carriers participated in Mexico's reciprocal pilot project. These carriers operated 55 trucks on 2,245 trips into Mexico.[15] Mexico continued to allow these U.S. trucking firms to operate in Mexico after the United States terminated its pilot program in 2009. As of April 2011, four of the 10 U.S. carriers were continuing to operate in Mexico.[16] FMCSA has not provided more recent data on how many U.S. carriers may be participating in Mexico's reciprocal program. Most U.S. trucking firms offering services in Mexico do so through a partnership with a Mexican trucking firm.

What About Hauling U.S. Domestic Freight?

NAFTA does not require that Mexican trucks be allowed to carry U.S. domestic cargo, and the Obama Administration pilot plan does not allow them to do so.[17] As is also the case with Canadian trucks, Mexican trucks are allowed to operate in the United States only if they are carrying cross-border cargo or if they are running empty for the purpose of picking up cross-border cargo. Mexican trucks may pick up a load in the United States and deliver it to either Mexico or Canada, but they are not permitted to carry freight from one U.S. point to another. A corresponding restriction applies to U.S. trucks operating in Canada or Mexico.

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[13] In addition to the *Federal Register* notice cited above, the other requirements are identified at http://www.fmcsa.dot.gov/rules-regulations/topics/nafta/nafta.htm.

[14] See a map displaying the commercial zones, http://www.fmcsa.dot.gov/images/us-mexico-border.jpg.

[15] 73 *Federal Register* 45797, August 6, 2008.

[16] FMCSA, press release April 8, 2011, with link to text to be published in the *Federal Register*, http://www.fmcsa.dot.gov/about/news/news-releases/2011/Mexico-Trucks-Proposal.aspx.

[17] 49 C.F.R. 365.501.

However, an inconsistency in trucking regulations may cause some confusion with respect to Mexican trucks. In 1999, the U.S. Customs Service (now U.S. Customs and Border Protection, or CBP) amended its regulations to allow a foreign motor carrier to make a domestic delivery as long as that movement is "incidental" to the international delivery. Under this exception, a Mexican or Canadian truck could carry U.S. domestic freight along the route it would follow to return to its home country. This change was made purposely to increase the efficiency and utilization of trucks.[18] However, immigration regulations require a foreign national driving a foreign-based truck to obtain a B-1 visitor visa, which prohibits the holder from engaging in such incidental domestic movements.[19] Thus, it is immigration regulations, rather than trucking regulations, that require Canadian or Mexican truck drivers to carry only cross-border cargo when operating in the United States.

Does Allowing Long-Haul Authority Improve Border Efficiency?

Besides the transfer of cargo between short-haul and long-haul trucking firms, there are other inefficiencies at the border that are obstacles to reducing the cost of cross-border transportation. Heightened security concerns have raised the scrutiny of traffic moving in both directions. The wait time for border crossing can be hours and is highly unpredictable.[20] This requires motor carriers to pad extra time when dispatching drivers, time that is lost even if the processing time proves less than expected, as drivers cannot be assigned other loads so quickly. Problems with incomplete cargo documentation or the need to conduct secondary customs inspections can back up trucks, even for those enrolled in pre-registered customs programs designed to speed the clearance process at the customs booth. Complaints persist that customs booths are not staffed sufficiently at peak periods. Mexico's customs processing is generally more labor-intensive than the United States' processing. Mexican customs brokers, rather than the shippers, are responsible for the accuracy of shipment information. They may conduct manual piece counts of trucks' contents for both incoming and outgoing cargo to verify proper payment of duties and taxes. This occasionally requires trailers to be unloaded and reloaded.[21]

The long wait time at the border is the reason a third truck is frequently used to shuttle cargo across the border. Rather than tying up long-haul truck equipment, shuttle trucks are used to move the cargo through the border-crossing process. These shuttle carriers are usually owner-operators using older equipment, and are normally hired by Mexican customs brokers or freight forwarders. In the case of produce trucks, only a driver is hired to move the cargo through the border process (the truck equipment is not exchanged). The economic rationale for granting long-haul authority is to allow for use of one truck instead of as many as three for long-haul shipments between Mexico and the United States. However, border wait times can negate any potential advantage gained by displacing short-haul equipment with long-haul equipment.

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[18] See 64 *Federal Register* 7502, February 16, 1999; 19 C.F.R. 123.14.

[19] See 8 C.F.R. 214.2(b)(4)(i)(E)(1)).

[20] A Government Accountability Office audit found that CBP does not have an adequate method for monitoring border wait times for use in adjusting staffing levels; see GAO, *U.S.-Mexico border: CBP Action Needed to Improve Wait Time Data and Measure Outcomes of Trade Facilitation Efforts*, July 2013, GAO-13-603.

[21] Cargo originating from a maquiladora or shipments between a parent company and its subsidiary may be somewhat more streamlined.

Are Mexican Trucks Less Safe Than U.S. Trucks?

A significant parameter FMCSA uses to judge the safety of trucking firms is "out-of-service" (OOS) rates tabulated for vehicles and drivers from roadside inspections. OOS violations are problems severe enough to prevent a truck or driver from continuing a journey until the deficiency is addressed. In the United States, 20% of trucks that undergo a roadside inspection must be taken out of service until a violation is addressed, and about 5% of truck drivers have violations that prevent them from continuing their journeys. Of the 14 Mexican carriers participating in the pilot, 4 have vehicle OOS rates similar to that of U.S. trucks, and the remainder have much lower rates. The two Mexican carriers that account for most of the crossings (and 85% of the inspections) have vehicle OOS rates of 10% and 13%. The Mexican carriers' driver OOS rates range from 0% to 3.7%, below the U.S. domestic average.[22]

There have been seven crashes reported among the Mexican carriers participating in the Obama pilot, but those crashes were not necessarily the fault of the Mexican trucker (the FMCSA data set does not indicate responsibility for the crash).[23] No fatalities resulted from these crashes, two of the crashes involved injuries, and all seven crashes required that a vehicle be towed from the scene. Because crashes are relatively rare events, FMCSA does not anticipate that crashes will be a statistically valid means of evaluating the safety of Mexican trucks.[24]

FMCSA has rejected 14 carriers that applied to participate in the Obama pilot. Of these, four were rejected because they previously were found to have operated outside the short-haul commercial zone without having the authority to do so, three failed a Department of Homeland Security screening, two provided insufficient evidence concerning their driver drug and alcohol testing programs, and five were dismissed for various other reasons.[25]

The safety of trucks may have less to do with whether they are of U.S. or Mexican origin and more to do with the type of truck. Drayage carriers, whose trucks make short-haul movements and spend much time idling while awaiting customs processing, tend to use older equipment. Long-haul trucks tend to carry relatively high-value goods or temperature-controlled cargo, because lower-value goods and less time-sensitive goods can be carried over long distances much more economically by rail or water. If shippers are willing to pay a substantial premium over rail or water transport to truck their product long distances, it seems plausible that they would choose a reliable trucker with modern equipment to avoid risk of delay or spoilage. For instance, since refrigeration technology is continually improving, shippers expect carriers to have the latest equipment for temperature and atmospheric control.

The difference in economic incentives for short-haul versus long-haul trucking raises an important policy issue. If safety is more important to long-haul trucking than it is to short-haul trucking, limits on cross-border travel by long-haul trucks may increase the presence of older, less safe trucking equipment in the border zones.[26]

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[22] http://www.fmcsa.dot.gov/intl-programs/trucking/trucking-program.aspx.

[23] http://www.fmcsa.dot.gov/intl-programs/trucking/trucking-program.aspx.

[24] 76 FR 20817-20818, April 13, 2011 and 76 FR 40435-40437, July 8, 2011.

[25] http://www.fmcsa.dot.gov/intl-programs/trucking/trucking-program.aspx.

[26] Mike Schofield and Robert Harrison, "Evaluating Mexican Truck Safety at the Texas/Mexico Border," University of Texas at Austin, September 2007.

A congressionally mandated study of serious accidents in the United States involving large trucks found that when the truck was determined to be primarily responsible, the driver was far more likely to be at fault than the vehicle.[27] FMCSA has determined that a Mexican commercial driver's license is equivalent to a U.S. commercial driver's license, and that the knowledge and skills testing for obtaining a Mexican commercial driver's license is similar to that in the United States. It also found that, unlike the United States, Mexico requires pre-test training for all new truck drivers, with additional training prior to each license renewal. FMCSA has access to traffic violation data for violations that occur in Mexico.[28]

Which Truck Driver Groups Are Opposed to Mexican Trucks?

U.S. truck driver organizations are opposed to allowing Mexican truck drivers to make deliveries beyond the border commercial zones.

The International Brotherhood of Teamsters is strongly opposed to allowing Mexican trucks to make long-haul deliveries into the United States. The Teamsters represent less than 1 in 10 truck drivers in the United States. Most Teamsters in the trucking industry work for UPS.[29] The carhauling market and national less-than-truckload (LTL)[30] carriers are two other truck segments where the Teamsters still have a strong presence. One Teamsters' concern is Mexican trucks delivering new cars from Mexican auto plants to U.S. dealers.[31]

Many independent owner-operator truck drivers are also opposed to allowing Mexican trucks to operate in the United States. These small trucking companies typically operate under the federal operating authority of a larger trucking company, and many find loads through a truck broker. They typically work in the truckload segment and would face competition from Mexican firms for NAFTA-related freight, including refrigerated cargoes. Historically, independent owner-operators were particularly important in hauling produce, which was exempted from federal economic regulation of trucking under the former Interstate Commerce Commission, and this is a sector in which Mexican trucking firms seem likely to be active.

The Teamsters and the Owner-Operator Independent Drivers Association (OOIDA), separately, challenged the legality of the Obama pilot in court, but the U.S. Court of Appeals for the D.C. Circuit rejected their arguments in April 2013.[32] In October 2013, OOIDA petitioned the U.S. Supreme Court to hear its case.

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[27] FMCSA, "Report to Congress on the Large Truck Crash Causation Study," November 2005.

[28] 71 *Federal Register* 20814, April 13, 2011.

[29] "Teamsters in Trucking," *Transport Topics*, March 22, 2010, p. 5. UPS changed its name from United Parcel Service because, in addition to handling parcels, it has also entered the less-than-truckload (LTL) and container load segments of the shipping industry.

[30] LTL carriers specialize in consolidating and transporting smaller-sized shipments utilizing a network of warehouses. Regional LTL carriers are non-unionized. Truckload (TL) carriers haul larger shipments directly between two points.

[31] Truck tractors are a significant import from Mexico. Truck drivers who deliver truck tractors are represented by the International Association of Machinists and Aerospace Workers.

[32] "Teamster May Abandon Legal Fight on Mexican Trucks, Seek Hill Hearing," *Inside U.S. Trade,* September 6, 2013; "Mexican Trucking Pilot Project Rolls On," *Journal of Commerce*, July 29, 2013.

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