



**Fact Sheet on the Scope of the
Environmental Impact Statement
Regarding
Cross-Border Long-Haul Mexico-Domiciled Commercial Carriers**

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The Federal Motor Carrier Safety Administration (FMCSA) must now address an historic task of determining the real impact on human health and safety of the opening of the U.S.-Mexico border to long-haul Mexico-domiciled commercial trucks.

While recent U.S. efforts to clean up diesel fleets and reduce the impact of cancer- and asthma-causing pollution have made progress, this progress could be undercut by the influx of more polluting, less stringently regulated Mexico-domiciled commercial carriers. Numerous differences also remain in the safety levels of trucks in the domestic fleet and the Mexico-domiciled fleet, introducing new and graver risks to others traveling on the highway alongside cross-border trucks.

The purpose of this analysis under the National Environmental Protection Act (NEPA) is to "insure that environmental information is available to public officials and citizens *before* decisions are made and *before* actions are taken." The agency must therefore begin the process of re-drafting the Application and Safety Monitoring regulations from scratch, considering all reasonably available options and their safety and environmental impacts with an open mind. Otherwise, this critical process of publicly identifying and considering alternatives is merely a sham. FMCSA also has a specific obligation to "identify and assess the reasonable alternatives" to the regulations that the agency will propose "that will avoid or minimize adverse effects to these actions on the quality of the human environment."

All of the items below should rightly be part of the agency's examination of the environmental and health impacts of its rules, and should provide grounds for the agency's return to the drawing board regarding its currently promulgated rules. In preparing the scoping document for the Environmental Impact Statement (EIS), the FMCSA should take into account the following important considerations:

Even Moderate Increases in Traffic from Mexico-Domiciled Commercial Carriers Will Cause Health and Safety Impacts:

- Diesel exhaust is a known carcinogen and a toxic air contaminant that has been shown to be a probable cause of asthma and is known to aggravate symptoms.

- Studies have also shown that the proximity of a child's school to major roads is linked to asthma and the severity of children's asthmatic symptoms increases with proximity to truck traffic.
- Children raised in heavily polluted areas have been found to have reduced lung capacity, prematurely aged lungs and increased risk of bronchitis and asthma, compared to children living in less urbanized areas.
- The FMCSA must look at the well-established health effects of diesel on children and the Environmental Protection Agency's (EPA's) collected data on asthma and diesel in its EIS.
- Safety is an absolutely germane part of the agency's EIS under prevailing law. Courts have indicated that safety is a part of the inquiry regarding the impacts on human health, and have confirmed that a NEPA analysis is required prior to the issuance of the safety rules recently developed by FMCSA. Safety and other human health impacts should therefore be included in the agency's EIS.
- Domestic carriers already incur 5,000 deaths every year, many of them in fatigue-related crashes. Yet Mexico-domiciled commercial carriers have no logbook requirement while driving in Mexico, a fact that makes logbooks maintained by cross-border carriers for the sole purpose of crossing the border into the U.S. highly suspect. We urge the FMCSA to consider the safety impacts of increased traffic on cross-border trucking routes and to tighten rules regarding logbooks maintained by Mexico-domiciled carriers to discourage fraud through rules requiring electronic on-board recorders and providing stringent penalties for abuse.
- All domestic carriers must be certified as in compliance with federal safety standards at the time of their manufacture. In 2002, FMCSA promulgated a final rule providing an exception or "safe harbor" for cross-border trucks lacking this kind of safety certification. This rule is probably an illegal act outside of FMCSA's mandate or authority, which provides no authorization for such an exemption from basic safety protections. (A fact sheet on this issue is attached at the end of this document.) This rule is unacceptable and its likely harmful impact must be considered as part of the EIS.
- A considerable percentage of trucks likely to be crossing in areas such as El Paso, TX, are shipments of hazardous waste and materials, including explosives and other highly dangerous chemicals and gases. For safety and national security reasons, these trucks should be subject to a higher level of scrutiny on safety and environmental grounds., beyond the required at-border inspection
- The EIS should include a risk assessment of risks posed by such shipments at each border crossing and should require that trucks bearing dangerous chemicals or explosives be equipped with on-board electronic or GPS tracking devices.

- In addition, there is currently no way for border inspectors to verify that a carrier's insurance papers properly indicate coverage for that shipment and carrier or are fraudulent or otherwise inadequate. Because it would be extremely difficult for U.S. citizens, localities or states to seek recovery for clean-up of a hazardous materials spill or accident directly from Mexico-domiciled carriers due to cross-border jurisdictional issues, this should be factored into any risk analysis and arrangements for the verification during inspection of insurance coverage should be made.

FMCSA Should Examine State, Regional and Local Impacts:

- The EIS should examine regional, state-wide and local effects of the border crossings and actively solicit input from citizens living in affected areas and along trucking routes on likely health and safety impacts. Impact projections should extend beyond a ten-year time horizon to address the likely impact of cross-border trucking over twenty and thirty years.
- The adverse air pollution effects would fall most heavily on border states, and on low-income and minority communities along those routes. Environmental justice concerns must be part of the environmental impact statement and there must be mechanisms to improve environmental inequities.
- Even without opening the border beyond the 20 mile border zone, northbound truck crossings increased by 70 percent over 7 years -- from 2.7 million in 1994 to 4.3 million in 2001.
- Many border states are already non-attainment areas for several of the CAA air quality standards, and the Houston and Los Angeles regions have the most polluted air in the country. A study by Sierra Research indicated that emissions in this sector could increase by as much as 10 percent, making it impossible for the Houston-Galveston area to comply with the Clean Air Act unless further offsets are found.
- Areas of California and Texas not in attainment with federal air quality standards will have greater difficulty reducing air pollutants sufficiently to meet the federal clean air act requirements.
- Many regions in California and Texas, including the South Coast Air Basin, Imperial County (San Diego Area), San Joaquin Valley, and many other areas in California as well as El Paso, Texas, are not in attainment with federal air quality standards for particulate matter which poses a serious health threat.
- San Antonio, Dallas, and Fort Worth also face severe air quality problems, and additional commercial traffic along Interstate 35 could put many areas in Texas out of attainment under the Clean Air Act.

- Additional emissions from the Presidio crossing could further degrade air quality over Big Bend National Park, a protected Class One area already damaged by diesel and other pollution.
- Truck emissions while a vehicle is idling in traffic during inspection and near congested or urban areas must also be considered.
- ICF Consulting has suggested utilizing natural gas fueling corridors along NAFTA highways as a mechanism to significantly reduce emissions. This should be considered as an alternative by FMCSA in its analysis.
- Beyond the border states, impacts could also be serious. Assessment should include the entirety of likely trucking routes and impacts on northern or other southern regions, states and localities as well. Any areas of nonattainment should each be specifically analyzed for impacts.

Mexico-Domiciled Commercial Carriers are Older, Less Safe and More Polluting:

- The Mexican trucking fleet is still more polluting mostly because it is far older, with only 20 percent of the fleet manufactured since 1994. In addition, there may be important differences in the maintenance of vehicles that affects both their safety and emission levels.
- The average age of the Mexican fleet is over 16 years old, whereas the average age of the U.S. fleet is approximately 5 years old.
- In any given year, some percentage of trucks sold or imported into Mexico will not contain engines that meet the U.S. emissions standards that are applicable to engines manufactured during that year. This could happen for three reasons. First, the engines could have been manufactured in Mexico. Second, the engines could have been manufactured in some country other than the U.S. or Mexico and imported into Mexico, either in foreign manufactured trucks or for installation into trucks manufactured in Mexico. Third, the engines could have been manufactured in the U.S. for export without complying with U.S. standards.
- An accurate estimate of emissions from Mexico-domiciled trucks will require an assessment of the adequacy and accuracy of the certification procedures in effect in Mexico for engines manufactured in or imported into Mexico. To the extent that engines used by Mexico-domiciled carriers are not certified in the U.S., it is erroneous to assume that they meet standards equivalent to U.S. standards.
- There is no apparent plan in Mexico to adopt low-sulfur diesel fuel requirements or the new emissions standards EPA adopted for implementation in the U.S. starting in 2007, so the pollution differences between the fleets are expected to remain and grow with time. Consequently, any comparison of future emissions may not assume that Mexican trucks will comply with future U.S. standards.

- FMCSA should therefore conduct an investigation of the sources of engines in trucks sold in and imported into Mexico. This investigation should contain historical information on the emissions profiles of all engines sold in or imported into Mexico from countries other than the U.S.
- Mexico should also adopt requirements that its fleet use low-sulfur diesel fuel by 2006 and the U.S. truck emissions standards for 2007-2010. The U.S. must create incentives for Mexico-domiciled fleet owners to retrofit their trucks or to purchase new cleaner fuel trucks. This will not only benefit the U.S. but also Mexican states.
- Prior testimony before Congress comprehensively demonstrated that Mexico-domiciled trucks were generally less safe than U.S. trucks. Safety inspectors must be allowed to conduct on-site or local inspections of carrier records and bookkeeping, and to verify logbooks and safety certifications prior to a carrier's authorization to cross the border. In addition, safety inspection station staffing and communication levels must be adequate to assure that all trucks without a current inspection sticker will be inspected at the time of the border crossing.
- A major continuing loophole is that, under current FMCSA rules, short-haul, or border-zone only trucks will continue to cross the border under a far less stringent inspection regime than long-haul carriers face. This dual treatment creates an incentive for fraud at the border, and evidence is strong that such fraud will be major temptation.
- An investigation in the late 1990s by the Department of Transportation Inspector General's Office showed that short-haul, or drayage, trucks had been found far north of the border in states like Maine, Florida and Minnesota. In focusing on long-haul trucks, FMCSA cannot ignore the possibility that trucks labeled as short-haul carriers may nonetheless travel outside the border zone, impacting safety and pollution levels. FMCSA must either tighten its inspection regime for these trucks or, far less favorably, include them in its analysis of environmental and safety impacts.

Few Emissions Stations Exist To Monitor Cross-Border Trucks:

- U.S. trucks must meet both on-road emissions standards in many states and comply with current law on emissions at the time of their manufacture. FMCSA must create a fraud-free method of certifying trucks as in compliance with applicable emissions standards at the time of their manufacture, and must verify such certifications at the border prior to a crossing.
- FMCSA should also work with states to implement local, state and regional emissions standards.
- There are also no emissions inspection stations along the border besides two small operations in California.

- Texas and New Mexico have no inspection stations and Arizona has not yet constructed their planned facility.
- Allowing entry of these trucks should be contingent on the creation of adequate emissions inspection stations at all major border crossings (El Paso, Laredo, Hidalgo/Pharr, and Nogales currently have none).
- The agency should also consider targeted air pollution monitoring along major border trucking routes. At a minimum, the agency must analyze existing EPA air quality data for some of these communities.
- The agency should investigate and implement if possible new technologies to measure tailpipe emissions at the border, such as laser devices, that may cost-effectively allow timely and accurate readings.

Other Comments Regarding the Scope of the EIS:

- The FMSCA must perform a conformity analysis to determine if any State Implementation Plans for the affected border states should be amended to achieve additional emissions reductions to offset the increase in emissions from the entry of the more polluting Mexico-domiciled commercial carriers. Without the analysis, there will be no offsets, and thus Clean Air Act violations.
- According to one study by Sierra Research, if as many as 50 percent of trucks on the roads in cities such as Houston were Mexico-domiciled commercial carriers, the estimated ambient levels of nitrogen oxides (NOx) would increase by more than ten percent. This increase could make it impossible for these areas to achieve attainment with clean air standards.
- Children are more susceptible to air pollutants because their lungs are still developing and because their airways are narrower than those of adults. In addition, children often play outdoors during the day, resulting in greater exposures. Children raised in heavily polluted areas have been found to have reduced lung capacity, prematurely aged lungs and increased risk of bronchitis and asthma compared to children living in less urbanized areas.
- Even though Mexico-domiciled commercial carriers are expected to travel across the country, the FMCSA cannot average impacts across the country. Instead, the agency must recognize that the border region and states will be most heavily impacted, and project health and safety impacts along likely trucking routes across a thirty-year time horizon.
- Air quality and other environmental and safety impacts should be analyzed through at least 2020, which is, in general the current planning horizon used for air quality planning in the U.S., and should be assessed on an annual basis through at least 2020 as well.

**Fact sheet for Federal Motor Carrier Safety Administration (FMCSA) and
National Highway Traffic Safety Administration (NHTSA) rulemakings
extending commercial truck safety certification requirements to Mexican and
Canadian trucks¹**

- These rulemakings were designed to create a process by which Mexico- and Canada-domiciled motor carriers must certify that their vehicles comply with the relevant Federal Motor Vehicle Safety Standards (FMVSSs) to avoid being in violation of the law when the carriers commence cross-border operations outside of the border zones.
- The FMVSSs are critical for ensuring the safety of American motorists. They require commercial motor vehicles (CMVs) to have such elements as antilock brakes, rear impact guards, and brake slack adjusters, all important safeguards against the catastrophe of a truck crash.
- The Vehicle Safety Act of 1966, as encoded at 49 USC 30112, states:

A person may not manufacture for sale, sell, offer for sale, introduce or deliver for introduction in interstate commerce, *or import into the United States*, any motor vehicle or motor vehicle equipment manufactured on or after the date an applicable motor vehicle safety standard prescribed under this chapter takes effect unless the vehicle or equipment complies with the standard and is covered by a certification issued under section 30115 of this title. (Emphasis added)
- NHTSA formalized their definition of “import” (now in use informally) to include vehicles brought across the border for commercial purposes. Consequently, all commercial motor vehicles brought into the United States must be certified as compliant with the FMVSSs.
- According to current law, any CMV that cannot be certified as in compliance with the FMVSSs must cease operations immediately. Consequently, Mexican vehicles that operate in the US and are not certified to be FMVSS-compliant should be barred from US roads immediately.
- However, under the proposed regulations those carriers that are already operating within our border zones or beyond *would have had 24 months of continued illegal operations before their compliance would be mandatory.* (67 FR 12784)
- FMCSA simply does not have the legal authority to issue such a stay of enforcement. The agency is attempting to skirt the law to the detriment of highway safety.

¹ DOT Docket No. FMCSA-01-10886; DOT Docket No. NHTSA-02-11592; DOT Docket No. NHTSA-02-11593; DOT Docket No. NHTSA-02-11594.