

## **Mexican Trucks Operating in the U.S. – What is the Real Impact?**

Recently, several customers have asked me what Melton anticipates the "real" impact will be re: Mexican truckers operating in the U.S. and how this will affect U.S. carriers, pricing, and capacity. Melton Truck Lines was the first flatbed carrier in the U.S. to provide through-trailer service in/out of Mexico almost 30 years ago. With offices and personnel in Mexico; Laredo, TX; and El Paso, TX; cross-border operations are an important part of our business model; consequently, we closely monitor developments and proposed legislation.

Below are two recent articles re: MX trucks operating in the U.S. Throughout the two articles are inserted my thoughts based on our historic experience in Mexico as well as how we see the future shaping up on this issue. At the end of the articles, I have summarized key points.

### **FMCSA Courts Mexican Carriers for Pilot Program**

#### **Too few participants could undercut statistical validity of new cross-border project**

*Journal of Commerce*

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Opponents of a new cross-border trucking program with Mexico fear it will draw thousands of Mexican truckers into the U.S., threatening American jobs.

The pilot project's backers, however, are concerned the program won't attract enough Mexican carriers to make it viable or statistically valid as a study.

"Probably the largest challenge is participation," said William Quade, an associate administrator at the Federal Motor Carrier Safety Administration.

"Only about 30 carriers participated in the last pilot project," Quade said at a Washington International Trade Association panel discussion June 29.

Federal Motor Carrier Safety Administrator Anne S. Ferro recently said she expects about the same number of Mexican carriers to apply for U.S. authority this time.

***The pilot project is scheduled to last for three years, after which conditional operating authorities granted under the program would become permanent.***

*After 3 years, if the program is deemed a success, participating MX carriers could potentially apply and receive operating authority. In the meantime, the few MX trucks participating in the test will likely have little if any appreciable impact on capacity or rates in/out of MX. This is especially true for the flatbed sector. As in the U.S., there are very, very few Mexican flatbed carriers of significant size or resources. There are far more large van carriers than flatbed carriers in both the U.S. and Mexico - therefore it is doubtful that flatbed will be significantly affected in the near term.*

*While much is being made of the "potential" for MX truckers to replace U.S. truckers, the real impact may be somewhat self-limiting. First, most of the MX truck drivers speak little or no English. While this is probably not an insurmountable obstacle in the border states i.e. Texas, Arizona, New Mexico, or California it will certainly present more challenges for non-English speaking drivers the deeper into the U.S. they penetrate. All U.S. documents, signs, BOLs, loading & unloading instructions, maps, etc are in English. A driver's inability to speak or read English will have an adverse impact on his/her ability to operate effectively in the U.S.*

*Second, restrictions will limit the operable lanes for MX carriers. The rules of cabotage simply mean that a MX carrier is not allowed to pick up a load in the US and deliver that load in the US. A MX carrier is allowed to transport a load from Mexico and deliver it to a destination in the U.S. However, after delivering in the U.S. the next load a MX carrier picks up in the U.S. must be an international delivery i.e. it must deliver in Mexico or Canada. Hence, to operate productively, MX carriers will necessarily restrict their U.S. destinations to those areas whereby they can easily reload shipment directly back to Mexico. The same rules of cabotage apply to Canadian drivers when operating in the U.S. and to U.S. drivers when operating in Canada.*

Ferro expects the first Mexican carrier in the program to start rolling into the U.S. by the end of August, triggering the suspension of punitive Mexican tariffs.

The agency is working on several fronts to meet that date, said Quade, preparing a Federal Register notice, reports to Congress, Web sites and responses to comments.

But drumming up interest among carriers south of the border will be key.

"We're looking for a statistically valid number of carriers to participate," Quade said, adding the DOT needs 4,100 "safety snapshots" from the three-year pilot project.

***But the type of long-haul Mexican truck operators that FMCSA wants to participate in the new pilot project aren't necessarily lining up at the border.***

***"There are significant costs for operating within the U.S. for a Mexican carrier," Quade said, including insurance costs, regulatory costs and congestion-related costs.***

*To my knowledge only one MX FLATBED carrier participated to any extent in the previous pilot program - and that carrier consisted of less than 70 total trucks. Melton Truck Lines has interchange agreements with about 10 MX carriers. Of these ten MX carriers, none are interested in sending their trucks into the U.S. and having to comply with our safety standards, insurance requirements, and regulatory compliance issues. Meeting these requirements would come at an ADDITIONAL cost to MX carriers and it*

*would appear many of them may not be willing to absorb the up-front cost to put insurance and compliance systems in place without definite contracts to assure their return on investment.*

The long-haul carriers targeted by the pilot project aren't the drayage operators currently sending thousands of trucks each day to the U.S. border commercial zone.

Speakers at the WITA event said ***the long-haul Mexican carriers operate newer, more expensive equipment they don't want held up for hours in lines at the border.***

***It would be more profitable for those carriers to keep those trucks rolling in Mexico, rather than stuck at crossings for hours behind much older drayage equipment.***

***The economics of Mexican trucking is different, too,*** said Martin Rojas, vice president of security and operations for the American Trucking Associations.

***"When we tell our Mexican counterparts the average profit margin for a U.S. trucking company in a good year is 3 percent, they say, 'How can you be in business with that?'" Rojas said. Trucking profit margins are usually higher in Mexico, he said.***

*Productivity is just as important to MX carriers as it is to US carriers. During average to busy times, the wait times to cross the international bridge in Nuevo Laredo / Laredo can range from 3 hours to as many as 8 hours. MX carriers cannot afford for their road-worthy expensive equipment and road drivers to be sitting in traffic for these extended periods. This is exactly why, generally speaking, NB loads are generally transported from interior MX origins to the MX carriers terminals in Nuevo Laredo, then repowered with very old, less expensive trucks for the drayage across the bridge to the US carrier terminals. These same older, less expensive trucks then return with a load which is taken to their terminal in Nuevo Laredo and repowered with a road truck to the final destination in MX. Tying up cheap equipment and less expensive local drivers for hours at crossing points only makes economic sense. MX carriers can make more money operating their expensive road trucks intra MX than they can running into the US.*

Mexican truckers still feel "burned" by the cancellation of the Bush-era pilot project in 2009, said Karen Antebi, economic counselor at the Mexican Embassy.

As a new program is implemented, stakeholders need to "ensure its viability," she said, "so our carriers have the confidence that it won't be shut down."

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## **Standoff over Mexican Trucks Resumes with Pilot Program Announcement**

from *Heavy Duty Trucking* magazine

By Oliver B. Patton, Washington Editor

Repeating the pattern that has been established over the past decade and longer, opponents of long-distance trucking across the Mexican border moved quickly yesterday to restrain the latest plan to open the border.

Within hours of the Department of Transportation announcing that U.S. Secretary Ray LaHood and Mexican Secretary Dionisio Perez-Jacome had signed an agreement to go ahead with the pilot program, ***the Owner-Operator Independent Drivers Association reported that it has sued to halt the program and several congressmen introduced legislation to limit the program.***

The three-year pilot program sets up a vetting and enforcement program to ensure the safety of Mexican trucks, with the goal of evaluating their safety performance, based on inspections at the roadside, ports of entry and weigh stations, and on traffic enforcement. Hazardous materials and passenger carriers are not included in the program.

It's the newest version of a story that has been going on since the United States and Mexico signed the North American Free Trade Agreement in 1994. In past versions the administration in office, Democrat or Republican, diligently looked for ways to implement the cross-border trucking provision of NAFTA while the Teamsters union, OOIDA, safety advocacy groups and environmental groups just as diligently looked for ways to scuttle the plan.

*What's different this time is that Mexico has upped the ante by levying retaliatory tariffs on 99 U.S. products. That tactic, which is costing more than \$2 billion a year, has brought U.S. food producers and their congressional representatives into the fight.*

*Food producers such as Kraft Foods, Campbell Soup and Tysons Food are on record in support of FMCSA's pilot program, and they have support from a number of congressmen who say that the tariffs have led to the loss of tens of thousands of jobs as well as more than \$4 billion in business losses.*

*Many industry observers are of the opinion that opening the borders to MX trucks operating in the US is NOT about "TRANSPORTATION" at all i.e. improving transportation efficiency, increasing capacity, or minimizing costs - it is about trade tariffs! Basically, Mexico is demanding that the U.S. comply with the original NAFTA agreements - if the US does not allow MX trucks into the US, then MX will continue to impose trade barriers which impact the US as referenced above. The industries and companies above seem to have deeper pockets and resources than the Owner-Operators Independent Drivers Association.*

Under the agreement, Mexico will start to phase out the tariffs when the program begins. That will happen when the U.S. DOT Inspector General completes a congressionally ordered report and FMCSA completes any work required by that report.

The agreement says Mexico will suspend half of the tariffs within 10 days of the program's commencement, and the remainder within five days of the first Mexican trucking company getting its U.S. operating authority.

## The Arguments For And Against

In a statement supporting the agency's program, the U.S.-Mexico Chamber of Commerce repeated the key argument for opening the border.

"In 2010, Mexico and the United States enjoyed a nearly \$400 billion trade relationship, and 70% of it travels by truck in an antiquated transportation system that requires three trucks and three drivers to do the job of one," the Chamber said in comments to FMCSA.

"This not only bloats producer and consumer prices by hundreds of millions of dollars a year. It also fails to fulfill the benefits (particularly lower transportation costs) that accrue from U.S.-Mexico proximity - a key NAFTA advantage. Doing so now clearly would boost U.S. and North American competitiveness against economic rivals and result in still more jobs." *While the transportation process alluded to in the previous paragraph is deemed "antiquated", I would certainly challenge the point that the process "bloats producer and consumer prices". When broken down, the current process makes logical business and financial sense. MX carriers use their most expensive equipment where it can be most productive with the least idle time (moving goods from / to interior MX <-> Nuevo Laredo). Oftentimes, crossing the border can take several hours. The MX carriers use old, cheap equipment and lower cost local drivers. Once, the load arrives in the U.S., a U.S. carrier connects a legal, DOT compliant road-worthy truck to the trailer and moves it to the final destination. The "cost savings" of having the road truck cross the border directly is more than offset by the time and productivity losses of waiting at the border to cross. This waiting time not only is inefficient use of equipment but also would be inefficient use of the drivers Hours of Service time.*

This was one of more than 2,250 comments on FMCSA's plan. Almost half of them came from Teamsters union members who repeated their fears that opening the border would lead to job losses. To this the agency said that the purpose of the pilot program is to test the effectiveness of the regulatory system and the safety of Mexican carriers. The jobs issue is beyond the scope of its authority, the agency said.

In the comments, opposition to the program coalesced around issues such as FMCSA's plan to fund electronic monitoring systems in the Mexican trucks and Mexico's standards for commercial driver's licenses.

In response to concerns about the electronic monitoring systems, the agency explained that Congress and other stakeholders made it clear that such systems needed to be part of the program. The agency said it will own the equipment and will control the data in order to ensure compliance with the hours of service rules and cabotage restrictions.

The cost of buying the systems for the duration of the program will be \$2.5 million. This is less than 0.1% of the costs borne by U.S. companies subject to Mexican tariffs over 12 months, the agency said.

"We believe this is not only in the public interest to require and provide the electronic monitoring devices, but is also a good investment for the country. *Melton Truck Lines (and other U.S. carriers) invest about \$2,300+ per truck for an EOBR and ongoing usage costs. It is interesting that the FMCSA will purchase this equipment (and own it) for the MX trucks to ensure they comply with US laws on HOS and cabotage. Yet, the FMCSA does not purchase or provide EOBRs for U.S. carriers - we spend millions of our own dollars to comply with DOT/FMCSA regulations.*

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Regarding the Mexican CDL, the agency said that existing federal rules already recognize and accept the Mexican Licencia Federal de Conductor as the equivalent to the U.S. CDL, and thousands of LCF holders have been driving their trucks into the U.S. for almost 20 years. In the same manner, the agency said, it has long recognized Mexico's physical qualification standards.

A number of opponents expressed concern about the impact of violence in Mexico. The agency responded that it is not aware of any information that suggests the pilot program will increase illegal activities.

To concerns about Mexico allowing reciprocal access to U.S. carriers, the agency said that hundreds of companies operate in the border region, and four U.S. carriers from 2007 demonstration project continue to operate into Mexico.

*So, four out of how many original U.S. carriers from the 2007 test continue to operate in MX? I know of no U.S. flatbed carrier that operates its own trucks in Mexico. I am aware of a couple of U.S. carriers that own or have partial ownership in a MX carrier; however, I know of NO U.S. carrier that allows its expensive, DOT/FMCSA compliant, over-the-road trucks to cross the border into Mexico. It is very, very unlikely that U.S. carriers are going to change their transportation process and send drivers and trucks into MX!! The difference in language, danger of violence, lack of insurance coverage, and overall risk are barriers that will prohibit U.S. carriers from operating in Mexico.*

A recent analysis of the issue by the Congressional Research Service provides some perspective. John Frittelli of CRS says in his report that very few trucks are likely to go further than the border states.

The 2007-2009 pilot program run by the Bush administration bears this out, he said. In that program, which Congress eventually shut down at the insistence of labor interests, Mexican participants made 12,516 trips into the U.S., of which 1,439 or 11.5% went beyond the 25-mile commercial zone next to the border. And only 4% of these long-haul trips went beyond the border state.

### **Program Details**

The agency intends to compare the performance of the Mexican carriers over three years against the performance of U.S. carriers. In the Bush administration's cross-border demonstration program, the agency found that the Mexican carriers had no accidents and much lower out-of-service rates than U.S. trucks and drivers. There were not enough Mexican carriers in the program to create a statistically valid sample, however, a shortcoming the agency hopes to correct with this program.

In general, the program will set up a three-stage process for Mexican carriers that wish to participate. FMCSA said it does not know how many Mexican carriers will join. The last program attracted 775 applications but only 29 of those carriers completed the paperwork and were vetted. *If the same holds true with the current "test", there will hardly be enough MX trucks operating in the U.S. to have any significant overall impact.*

The process will start with the Mexican carrier filling out a 28-page application covering details of its operations, including affiliations, insurance, safety program and compliance with U.S. laws.

The application will be followed by a pre-authorization safety audit, in which FMCSA reviews the carrier's safety management system and inspects the specific trucks that will cross the border. The safety management system would have to include such elements as a drug and alcohol testing program and a way to verify hours of service, insurance and driver qualifications, among numerous other requirements. Trucks that pass the inspection will get a CVSA decal.

If the carrier passes the audit it would get provisional operating authority and could commence cross-border operations. Provisional authority will last for 18 months. After that period, if the carrier has no pending enforcement or safety improvement actions and has cleared a compliance review, it is eligible for permanent

authority in the pilot program.

Mexican carriers that have permanent authority in the pilot program would be eligible to convert that to standard permanent authority, after the three-year pilot program is done.

For the first three months of the provisional authority stage, Mexican trucks and drivers will be inspected each time they enter the U.S. That period will be extended if the carrier does not get at least three inspections.

After three months and clearing the audit, the carrier will get the same inspection rate as the rest of the trucks now engaged in cross-border, commercial zone trucking. To be eligible for this status, the carrier must have an out-of-service rate at or below the U.S. average and its Safety Management System scores must be below the FMCSA threshold.

The pilot would run for three years from the first grant of provisional authority, unless FMCSA gathers enough data to make a decision about the program before then. The agency said it could stop the program earlier if continuation is not consistent with the pilot's goals.

FMCSA will publish on its website and in the Federal Register comprehensive data on the Mexican carriers in the program, including their names, their audit performance, the trucks that have been cleared, the results of roadside inspections and the number of trips. The agency will track each carrier's data to gauge compliance.

The U.S. and Mexican departments of transportation will establish a monitoring group to supervise the administration of the program. In addition, FMCSA is establishing its own advisory committee, a subcommittee of the Motor Carrier Safety Advisory Committee, for suggestions. And the agency will make annual reports to Congress.

*In summary, from a "flatbed only" perspective here's what I see....*

- 1) There will be relatively few MX trucks that cross the border and operate in the U.S. Of those that do, very few will be flatbeds. MX carriers can make more money by keeping their more expensive, "DOT compliant" equipment running productively in Mexico.*
- 2) Any proliferation of MX trucks into the U.S. will most likely impact the border states (TX, NM, AZ, CA) where Spanish-speaking is most common in the U.S.*
- 3) MX trucks will by default limit their coverage area(s) to point-to-point round-trip lanes due to cabotage restrictions.*
- 4) U.S. carriers will not benefit from "mutually opening the border" as U.S. carriers will not send their English-speaking only drivers or expensive trucks into Mexico due to insurance, theft, safety, and cost issues.*
- 5) Many MX carriers may be hesitant to push their trucks into the U.S. for fear of jeopardizing their interline arrangements with major U.S. carriers. Explanation: U.S. carriers interline (contract) with MX carriers to pull their trailers in/out of Mexico delivering and picking up loads. If a MX carrier begins taking loads directly to final destination in the U.S., then the U.S. carriers with which they interline could view the MX*

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*carriers as competitors trying to take business away from the U.S. carrier and elect not to use the MX carrier on any interline business.*

*6) Like U.S. carriers, MX carrier costs have skyrocketed over the past several years with little increase in revenue rates. The cost of diesel, equipment, insurance, and even labor have increased year-on-year in Mexico. As in the U.S., many MX carriers were driven out of business and/or reduced active trucks on the road. MX carriers see the increased demand and are aggressively adjusting their rates. These rate increases will ultimately be shared with the U.S. shippers, consignees, and customers.*

*If you would like more info regarding MX carriers operating in the U.S., I've included a Q&A below that can provide additional insight. Please don't hesitate to contact your Melton Truck Lines regional representative or me if we can be of help.*

*Best regards,*



Dan Taylor  
Senior Vice President - Sales & Marketing  
Melton Truck Lines, Inc.  
918-234-8000 x600  
[taylor@meltontruck.com](mailto:taylor@meltontruck.com)

***Melton***  
*Truck Lines, Inc.*

[www.meltontruck.com](http://www.meltontruck.com)