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| 16. Abstract<br><p>This report presents results from an inventory of federal, state, and other entities that have responsibilities affecting the transboundary movements between Texas and Mexico. A companion report (Study Report 1500-2F) contains analyses and descriptions of scenarios identified and formulated during the inventory.</p> <p>The report presents the findings of the tasks: to identify and review the statutes within each agency group that was involved with transborder movements and the basis for their involvement; to obtain information that would describe the operational aspects of their border activities, determine key issues that face their operations currently, and discover how they interact with other agencies; and to group the key issues identified at the different levels and develop key groups of issues that are now affecting the movement of goods and people across the U.S.-Mexico border.</p> <p>Nine separate federal agencies were identified, analyzed, and reported on. They were: U.S. Customs Service, Immigration and Naturalization Service, U.S. Border Patrol, U.S. Department of Transportation, Drug Enforcement Administration, U.S. Department of Interior, U.S. Department of Agriculture, U.S. Food and Drug Administration, and the U.S. Environmental Protection Agency.</p> <p>Ten separate state agencies that were included in the final inventory of the study were: Texas Department of Transportation, Department of Public Safety, Attorney General of Texas, Texas Natural Resource Conservation Commission, Governor's Policy Office, Railroad Commission of Texas, Alcoholic Beverage Commission, Department of Insurance, Comptroller of Public Accounts, and Department of Commerce.</p> <p>Additional information was developed by other border agencies/activities, including: The North American Trade Automation Prototype (NATAP, Border ITS Planning Study, U.S.-Mexican Binational Transportation Planning and Programming Study, Border Regional Transportation Planning, Private Sector Investment in Border Infrastructure, and Binational or Multinational Organizations.</p> |   |  |           |
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**Federal, State, and Other Agencies Involved in Transboundary  
Movements on the Texas/Mexico Border: A Handbook**

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Research Study Title:  
**Interaction of TxDOT with Other Public Agencies Involved in the  
Taxation, Control, and Law Enforcement of the  
Transboundary Movement of Goods and People**

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TEXAS TRANSPORTATION INSTITUTE  
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## **IMPLEMENTATION STATEMENT**

Information contained in this handbook will be useful to persons interested in identifying and understanding the primary roles of the myriad of agencies and entities who have responsibilities for transboundary movements between Texas and Mexico. The handbook is not exhaustive in its coverage, particularly in identifying the countless unique transportation aspects of the various local border environments. Also, the user should remember that the border manifests a highly dynamic transportation system; consequently, the information contained herein is subject to rapid change and obsolescence.

## **DISCLAIMER**

The contents of this report reflect the views of the authors, who are responsible for the facts and the accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of the Federal Highway Administration or the Texas Department of Transportation. This report does not constitute a standard, specification, or regulation and is not intended for construction, bidding, or permit purposes.

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## SUMMARY

This report presents results from an inventory of federal, state, and other entities that have responsibilities affecting the transboundary movements between Texas and Mexico. A companion report (Study Report 1500-2F) contains analyses and descriptions of scenarios identified and formulated during the inventory.

The report presents the findings of the tasks: to identify and review the statutes within each agency group that was involved with transborder movements and the basis for their involvement; to obtain information that would describe the operational aspects of their border activities, determine key issues that face their operations currently, and discover how they interact with other agencies; and to group the key issues identified at the different levels and develop key groups of issues that are now affecting the movement of goods and people across the U.S.-Mexico border.

Nine separate federal agencies were identified, analyzed, and reported on. They were:

- U.S. Customs Service,
- Immigration and Naturalization Service,
- U.S. Border Patrol,
- U.S. Department of Transportation,
- Drug Enforcement Administration,
- U.S. Department of Interior,
- U.S. Department of Agriculture,
- U.S. Food and Drug Administration, and
- Environmental Protection Agency.

Ten separate state agencies that were included in the final inventory of the study were:

- Texas Department of Transportation,
- Department of Public Safety (DPS),
- Attorney General of Texas,
- Texas Natural Resource Conservation Commission,
- Governor's Policy Office,
- Railroad Commission,

- Alcoholic Beverage Commission,
- Department of Insurance,
- Comptroller of Public Accounts, and
- Department of Commerce.

The information developed for the final section focused upon

- International Transportation Technology Initiative: The North American Trade Automation Prototype (NATAP),
- Border ITS Planning Study,
- U.S.-Mexican Binational Transportation Planning and Programming Study,
- Border Regional Transportation Planning,
- Private Sector Investment in Border Infrastructure, and
- Binational or Multinational Organizations.

## **METHODOLOGY AND STUDY APPROACH**

### **BACKGROUND**

The purpose of this report is to present results from an inventory of federal, state, and other entities that have responsibilities affecting the transboundary movements between Texas and Mexico. A companion report (Study Report 1500-2F) contains analyses and descriptions of scenarios identified and formulated during the inventory.

The original study objectives were threefold. First, the study was to identify and compare responsibilities of various agencies involved in the transboundary movement of goods and people along the Texas-Mexico border. Secondly, the researchers were to analyze and make recommendations to aid and expedite operational activities related to these transboundary movements. Finally, in accomplishing this evaluation, the researchers were to identify, analyze, and monitor post-December 1995 transportation activities. This was because the second phase of the transportation changes under the ratified North American Free Trade Agreement (NAFTA) was to begin on December 18, 1995, and would have substantial impacts within the contiguous U.S. and Mexican border states. In addition to changes in the rules governing ownership of trucking firms in Mexico and international bus operations, the main elements of the NAFTA changes centered on the opportunity for truckers in the contiguous border areas to work across the border. In other words, a trucker registered in Tamaulipas was to have access to the four U.S. border states. Clearly, this had ramifications for Texas, given both its long (1980 km) border with Mexico and the position of Texas as the main trade conduit for U.S.-Mexico commodities.

### **RESEARCH APPROACH**

Researchers met within the first three months and agreed on a consistent research method to examine the different levels of agency responsibility and allow for the flexibility needed to accommodate the differences in the levels of government. Since federal, state, and

local entities have unique (though often overlapping) responsibilities, it was not expected that a single approach would be replicable at the various levels, since the agencies were not "mirrors" of their counterparts. Thus, three teams were formed to address the federal agencies, state agencies, and, finally, local agencies with the latter including related border entities such as private sector and other interest groups.

Each group had three main tasks. The first was to identify and review the statutes within each agency group that was involved with transborder movements and the basis for their involvement. The second task was to obtain information that would describe the operational aspects of their border activities, determine key issues that face their operations currently, and discover how they interact with other agencies. The third and final task was to group the key issues identified at the different levels and develop key groups of issues that are now affecting the movement of goods and people across the U.S.-Mexico border. The study team termed these groups as "scenarios" and proposed a variety of ways of representing them, using diagrammatic analysis to illustrate processes and information flows and providing supportive evidence of initiatives being undertaken to resolve problems contained within each of the scenario groups.

The methodology, therefore, can be conveniently stated in terms of three elements: structure, information collection, and scenarios. Some restructuring in the phasing of the work became necessary when, in early December 1995, U.S. Secretary of Transportation, Federico Peña, announced that the United States was unilaterally postponing the second phase of the NAFTA transportation agreement, ostensibly because of the lack of preparedness on the part of the U.S. and Mexican trucking industries and associated state and federal agencies, which combined to prejudice the safety of U.S. citizens on its highways.

The original methodology proposed first to review agency performance in the United States and then to incorporate the Mexican agencies in the second year of the study. There was a clear recognition on the part of the study team that the study should address the border as a system and, therefore, include Mexican counterpart agencies. This is particularly important if the scenarios are to reflect truly the transborder movements of goods and people. Decisions and procedures adopted on the Mexican side of the border are critical elements in

the efficiencies of such systems and must, therefore, be addressed. The unilateral postponement of the second phase of NAFTA by the U.S. government complicated the methodology, but it was decided to wait and see when the actual changes were undertaken.

The study team agreed to follow a common format for each agency that would identify a range of statutes, responsibilities, and interactions with other agencies. Agencies were to be described and statutory authority identified. The descriptions of the agencies should be based on a combination of published data and interviews. The reason for not relying solely on published data was based on the dynamic nature of the transborder activities. Frequently published data are out-of-date and do not (indeed, cannot) reflect the developments that are framing the new policies likely to be adopted in the near future. From the combination of personal interviews, profiles could then be developed for each agency and scenarios then built. The different profiles developed from federal, state, and other sources would then be interlinked into the different scenario areas.

## **DETAILED AREA METHODOLOGIES**

The general methodology described above was refined to fit the needs each of the three levels. The following sections describe in more detail the data collection used at the federal, state, and other levels.

### **Federal Agencies**

The development and analysis of information describing the responsibilities and operations of the federal agencies relied principally upon the availability of secondary data and sources. A quick review of federal agencies revealed that almost each agency has (in the limit) some responsibility for international activities. The focus of this study was kept on those federal agencies that directly impact the taxation, control, and law enforcement of the transboundary movements of people or goods. This criterion was paramount in the selection of federal agencies for analysis and presentation of the transportation activities to be included



in the study. Several federal agencies, including the U.S. State Department (involved in granting bridge permits), the General Services Administration (the "landlord" of federal government property at crossing points), the U.S. Army Corps of Engineers (involved with navigable waterways), and the U.S. Coast Guard (involved with navigation and safety) have duties and responsibilities on the Texas/Mexico border. However, none of these federal agencies directly interact with the taxation, control, and law enforcement of the actual transboundary movement of people or goods. Therefore, they are not included in the study's inventory of federal agencies. After initially screening the candidate agencies, nine separate federal agencies were examined:

1. U.S. Customs Service,
2. U.S. Immigration and Naturalization Service,
3. U.S. Border Patrol,
4. U.S. Department of Transportation,
5. U.S. Drug Enforcement Administration,
6. U.S. Department of Interior,
7. U.S. Department of Agriculture,
8. U.S. Food and Drug Administration, and
9. U.S. Environmental Protection Agency.

### **State Agencies**

Ten separate state agencies that were included in the final inventory of the study. State agencies interviewed and included were:

1. Department of Public Safety (DPS),
2. Attorney General of Texas,
3. Texas Natural Resource Conservation Commission,
4. Governor's Policy Office,
5. Railroad Commission,
6. Alcoholic Beverage Commission,

7. Department of Insurance,
8. Comptroller of Public Accounts,
9. Department of Commerce, and
10. Texas Department of Transportation.

The state's largest agency, the Texas Department of Transportation, had a multiplicity of responsibilities affecting transboundary movements. Consequently, an extensive information collection and interview process involving several of TxDOT's divisions and offices obtained information from TxDOT. The TxDOT International Relations Office (IRO) provided a list of the offices within the Texas Department of Transportation (TxDOT) responsible for transborder movements. These comprised:

1. Motor Carrier Division,
2. Vehicle Titles and Registration Division,
3. Multi-Modal Operations Office,
4. Design Division,
5. Traffic Operations Division,
6. Public Transportation Division,
7. Planning and Programming Division,
8. Right-of-Way Division,
9. Environmental Affairs Division, and
10. International Relations Office.

Work began by personally interviewing staff (usually a senior staff person) in the relevant TxDOT departments, collecting from them the departmental responsibilities and duties with respect to border movements and discussing emerging issues and scenarios. In addition to collecting evidence on the substantial impact that NAFTA has had on TxDOT operations, the researchers were able to discover links with other state agencies that were necessary to review all state agencies. The initial interviews, therefore, yielded interviews with other related state agencies that were able to complement information collected from TxDOT. Interviews were also undertaken with all major state agencies associated with transborder movements of goods and people.

In addition to this intensive program of personal interviews with state agency personnel, the state team also visited several border cities, including Laredo, El Paso, and the Rio Grande Valley regions. In these border visits, the team conducted a number of interviews, beginning with the TxDOT district offices. This was undertaken because of the specific duties and responsibilities with respect to transborder transportation activities facing the staff at border district offices. A majority of the key staff are bilingual and are familiar with the border transportation needs on both sides of the U.S.-Mexico boundary. They have formed close personal relationships with key individuals in the various contiguous Mexican states, and this generates substantial numbers of questions, personal communications, and requests for assistance on a variety of transportation matters. They are on the front line of the "border action" and are critical in the analysis of this study. Interviews with the staff generated material which is critical to understanding fully the relevance and impact of the various scenarios currently being formulated, and such visits address, at least partially, the dynamic nature of the problem.

The interviews generated secondary interviews, depending on the nature of the problem. Despite the fact that U.S.-Mexico trade is frequently treated in a homogenized form, the reality is that it moves through distinctly different import/export gateways, and these gateways are characterized in different ways, both economically and politically. This suggests that caution needs to be exercised with respect to developing general solutions to particular problems, and the interviews with the TxDOT officials in the different districts provided us with an intelligence base to address the different concerns and issues facing those concerned with moving goods and people at the different gateways. In addition to border visits, the team attended a conference on infrastructure development held by the U.S. Department of Commerce and Mexico's Ministry of Commerce and Industrial Development. Again, conferences such as this highlighted the quickly changing nature of transboundary movements of goods and people along the U.S. southern border. The team also collected information by telephone and by using published sources.

Finally, legislative agencies were contacted to track emerging issues, particularly as they related to possible political initiatives. Phone interviews were undertaken with key staff in the House Commission on Transportation, the House Commission on State, Federal and International relations, and, finally, the Senate Commission on International Relations, Trade and Technology. Of these committees, only the House Commission on State, Federal and International relations was interviewed further as the others claimed that they had no current interest in transborder activities.

#### **Other Entities (non-federal and non-state)**

The many unique situations, procedures, and institutions that exist in various locales up and down the border punctuate the complexity of the Texas/Mexico border. In fact, the place-specific aspects of the border are an outgrowth of the historical and cultural relationships that exist between residents on one side of the border with residents on the immediate opposite side of the border. A border culture emerges that, in practice, can transcend the statutory and official implementation of procedures designated to define transboundary movements.

This section of the inventory portion of the study focuses upon some of those "players" at the border who are not members of federal or state governmental agencies. Importantly, this includes binational entities, local and regional agencies (both governmental and private), and private sector enterprises.

Unlike the discussions of the federal and state agencies, which were fairly exhaustive in the coverage of border related activities, the content of this section identifies several relevant activities at various border locations and is not meant to be a complete inventory of salient players up and down the entire 1980 km border. Such an inventory would far exceed the scope of this study and the resources dedicated to this (non-federal/state) portion of the work.

The information developed for this section focuses on: binational transportation planning and technology; regional transportation planning activities for selected border MPOs; private sector investment in transportation infrastructure; and selected other entities involved in transportation activities on the Texas/Mexico border.

## **STATE AGENCIES**

### **TEXAS DEPARTMENT OF TRANSPORTATION DESIGN DIVISION(1)**

#### **Design Division Objectives and Responsibilities**

Responsibilities of this division concern implementing the preliminary phases of transportation projects. Implementation includes such activities as geometric design, pavement design and management, bridge design, administration of bridge replacement and rehabilitation programs, project plan reviewing and processing, standard construction specifications, and hydrology and hydraulics engineering (Guide to Texas State Agencies, 226).

#### **Design Division Activities at Border**

The Land Transportation Standards Subcommittee (LTSS), created in Article 9 of NAFTA and composed of representatives from the U.S., Canada, and Mexico, is responsible for harmonizing specific transportation standards having to do with motor carrier equipment and operations, such as vehicle weights, dimensions, inspections, emissions, security of cargo, driver qualifications and licensing. Presently, the Design Division is awaiting the outcome of harmonization discussions on size and weight specifications. The agreed-upon vehicle size and weight specifications will be the most significant aspect of NAFTA in relation to this division's work. Size specifications have implications on the geometric design of highways. Retrofitting existing highways to accommodate longer truck lengths will be difficult. In addition, weight specifications have implications for pavement design and life, as well as for bridge design and life. The fact that different suspension systems and axle spacings carrying the same amount of weight can have very different impacts on pavement makes this issue more complex.



In addition, the Design Division is involved in the presidential permitting of bridges. TxDOT adopted 43 TAC §§15.70-15.76 concerning international bridges. Texas Civil Statutes, Article 6674v-8, provide that a political subdivision of a private entity authorized to construct or to finance the construction of a bridge over the Rio Grande must obtain approval of the Texas Transportation Commission before requesting approval from the federal government under Subchapter IV, Chapter 11, Title 33, United States Code. The Design Division is consulted in the Commission's assessment of the application, since the application includes a preliminary geometric layout design certified by a registered professional engineer. §15.73 specifies the criteria of this layout.

Upon receipt of a completed application for a Presidential Permit, TxDOT will submit a copy of the application for review and comment to the following state agencies: Texas Natural Resource Conservation Commission, Department of Public Safety, Texas Historical Commission, Texas Department of Agriculture, Texas Alcoholic Beverage Commission, Texas Department of Commerce, the Office of the Governor, and any other state agency TxDOT determines is appropriate (i.e., Texas Parks and Wildlife Department).

Within TxDOT, the Environmental Affairs Division is also consulted in the Commission's assessment of the application. This division reviews the applicant's environmental assessment and/or environmental impact statement.

Also, the Texas Legislature, in accordance with 6673j-1 of the Texas Civil Statutes, has directed TxDOT to review its proposed highway projects annually and to report, not later than February 1st of each odd-numbered year, on the ability of the state highway system to handle the projected volumes of highway traffic resulting from international trade. In an effort to address this directive, TxDOT produces the report, Planning Activities Along the Texas-Mexico Border. The Design Division takes the lead in this task. This document reviews the General Agreement on Tariffs and Trade (GATT), NAFTA, and TxDOT's Planning Process. The report details the border highway infrastructure status, as well as the status of international bridges and border crossings. In addition, the report summarizes the following: TxDOT's multimodal activities, proposed toll roads, feasibility and research studies, TxDOT's participation in state/federal/international activities, and other TxDOT activities along the Texas-Mexico border.



**TEXAS DEPARTMENT OF TRANSPORTATION**  
**ENVIRONMENTAL AFFAIRS DIVISION(2)**

**Environmental Affairs Division Objectives and Responsibilities**

This Environmental Affairs Division is responsible for providing guidance and coordination of TxDOT's environmental activities. Primarily, this division coordinates the state and federal environmental reporting requirements needed for all types of transportation projects, including those required for the construction of international bridges.

**Environmental Affairs Division Border Activities**

The Environmental Affairs Division is the point of contact for all transportation related environmental issues along the Texas-Mexico border. The majority of this division's work on the border concerns international bridge permits.

This division identified several areas of concern surrounding the transport of hazardous materials. A tension exists between the fact that the Texas Natural Resource Conservation Commission (TNRCC) is the agency which has formal spill response duties, yet TxDOT has a greater field presence than TNRCC. There are several reasons for TxDOT's greater field presence: many more TxDOT than TNRCC workers are employed throughout the state; TxDOT has significantly more equipment available for spill response, such as trucks and sand; and because TxDOT is responsible for the welfare of the traveling public, the agency is often on the scene of a spill. A second problem identified by the Environmental Affairs Division is an imprecise definition of which agency or agencies have the responsibility and jurisdiction to check for hazardous materials at the border crossings. Presently, there are no routine checks at the border enforcing regulations regarding proper handling of hazardous materials by carriers.

## **TEXAS DEPARTMENT OF TRANSPORTATION INTERNATIONAL RELATIONS OFFICE(3)**

### **International Relations Office Objectives and Responsibilities**

The International Relations Office (IRO) is TxDOT's protocol office and liaison with the Governor's Office for international activities. The IRO director chairs the TxDOT Standing Committee on Border Affairs, which consists of border-area district engineers and division directors whose activities include some international element. Most of the office's activities are focused on Mexico, but there are also NAFTA-related activities involving Canada. The IRO also coordinates the visits of transportation officials from around the world to TxDOT.

### **International Relations Office Objectives and Responsibilities Activities at Border**

The IRO was created in July of 1991 and developed along with NAFTA. The focus of the IRO's work is on Texas-Mexico relations. In fact, the director of the IRO has been appointed to represent TxDOT on the Joint Working Committee (JWC), which is charged with the responsibility to oversee a binational border transportation study that will lead to an ongoing, coordinated, bilateral, border transportation infrastructure planning and programming process. This study of the U.S.-Mexican border is being conducted with the active participation of federal transportation agencies of both countries, the U.S. State Department, the Mexican Ministry of Foreign Relations, and the four U.S. and six Mexican border-state departments of transportation.

In addition, the IRO director is the co-chairman of the Border Technology Exchange Program (BTEP), which the Federal Highway Administration (FHWA) funds. The IRO is presently in the second year of the three-year program. At the end of the third year, the FHWA will decide if it wants to fund the program for additional year(s). The focus of the BTEP is twofold: there is a border-long dimension, and each U.S. border state has a bilateral

exchange with its counterpart Mexican state(s). The BTEP supports such activities as conferences on binational transportation planning, value engineering workshops, TxDOT official visits to Mexican states, as well as Mexican state official visits to TxDOT, and information exchanges on various transportation topics. Value Engineering analysis (VE) is one project in particular the BTEP sees as worthwhile. The TxDOT Design Division takes a leading role in VE projects; however, the IRO takes a significant role when VE projects are implemented at the border. Presently, TxDOT is helping Mexican border states by agreeing to assist (or do) some VE projects in Mexico.

In addition, the IRO represents the Governor's Office on the Border Governors' Conference Transportation Committee, on the Gulf Coast Governors Conference Transportation Infrastructure Committee, and at the Binational Conference on Bridges and Border Crossings.

The roles of this office in relation to the Texas-Mexico border are varied and continually growing; however, the primary focus of improving international coordination of U.S.-Mexican border transportation infrastructure planning, construction, and operation, and providing international policy counsel and protocol support to TxDOT and other state officials remains the same.

The IRO is concerned with the issue of communication and views this issue as the primary challenge of coordinating transportation planning with Mexico. The IRO believes that language differences contribute a great deal to the communication barrier but feels that the effort for improved communication should not stop with language and the continuing effort of bilingualism. This office feels that Texas transportation officials can be more effective if they are aware of the cultural, historical, and political backgrounds of their Mexican counterparts.

**TEXAS DEPARTMENT OF TRANSPORTATION**  
**MOTOR CARRIER DIVISION(4)**

**Motor Carrier Division Objectives and Responsibilities**

The purpose of the Motor Carrier Division is to provide motor carrier credentials, to issue oversize/overweight permits, to ensure financial responsibility, to protect consumer, to respond to information needs, and to provide a responsive environment to meet employee needs. The 74th Legislature changed the regulatory environment for trucks. In response to federal deregulation, Senate Bill 3 eliminated the marketplace entry and rate-making powers of the Texas Railroad Commission and transferred remaining duties to TxDOT. The Motor Carrier Division was created within TxDOT in order to carry out these duties.

The Motor Carrier Division is responsible for implementing the following statutes:

- TVCS 6675c provides for motor carrier operating authority registration. Administering this legislation is the Motor Carrier Division's primary responsibility. It should be noted that motor carrier operating authority registration differs from vehicle registration, which is administered through the Vehicle Title and Registration Division. Vehicle registration is concerned primarily with individual vehicles (such as tractors and trailers for motor carriers). The operating authority registration is concerned primarily with the motor carrier company, although this registration does capture some data about individual vehicles. The fees for operating authority registration are as follows: \$100 registration fee, \$100 insurance filing fee, and \$10 per vehicle. After the initial registration, renewal is \$10 per vehicle per year. There are various insurance limits based upon the class of cargo. The fees from this permit go to general revenue.
- TVCS 911m relates to motor transportation brokers. This statute requires anyone who engages in the business of providing services as a motor transportation broker to file a performance bond. The filing fee is \$5. There is a required \$10,000 bond. The fees obtained from this permit go to general revenue.

- TVCS 6701a relates to General Oversize/Overweight Permits. This is the basic permit law and provides for the movement of oversize/overweight loads that cannot be reasonably dismantled. The permit fees are as follows: \$30, Single Trip; \$60, 30 Day; \$120, 60 Day; \$135, 90 Day; and an additional fee for over 36.4 kg, ranging from \$50 - \$125. Base fees go to GR. Fees for over 36.4 kg, go to the Highway Fund.
- TVCS 6701d-11 Sec 5B (HB 2060/HB 1547) authorizes the issuance of an annual permit that would allow vehicles hauling loads that can be reasonably dismantled to exceed gross weight and axle tolerances. The base fee is \$75, and there is a \$5 administration fee plus a sliding scale based on the number of counties in which the vehicle will operate. A surety bond is an eligibility requirement for the permit. Fifty dollars of the base fee goes to the counties, \$25 of the base fee goes to the Highway Fund, \$5 of the administration fee goes to the Highway Fund, and the sliding scale fee goes to the counties.

In addition, this division has a responsibility to help enforce other statutes, mostly in terms of permitting. There are permits for specific commodities. For example, there are various permits for motor carriers that haul grocery products, farm products, LP gas, and round bales of hay.

### **Motor Carrier Division Activities at Border**

Mexican motor carriers must meet the same registration requirements as other carriers once the cross-border provisions of NAFTA are implemented. As of March 26, 1996, 56 Mexican motor carriers, representing 800 vehicles, were properly registered with the Motor Carrier Division and ready to do business in Texas.<sup>(5)</sup> Until cross-border provisions are implemented, however, Mexican trucks can travel according to the provisions of the informal paired-city understandings within a narrowly defined geographic area, exempted from registration as before. They are subject to the same safety requirements and weight limits as Texas-registered trucks.



Also, the Motor Carrier Division maintains and sells the hazardous materials route maps. This division does not have the responsibility of designating hazardous materials routes, but simply updates and sells the map to the public in general as well as to motor carriers.

## **TEXAS DEPARTMENT OF TRANSPORTATION MULTIMODAL OPERATIONS OFFICE(6)**

### **Multimodal Operations Office Objectives and Responsibilities**

The Multimodal Operations Office oversees TxDOT's involvement in the Gulf Intracoastal Waterway (GIWW), bicycle and pedestrian projects, and rail and intermodal projects.

### **Multimodal Operations Office Activities at Border**

The Gulf Intracoastal Waterway Office coordinates with economic and environmental agencies in planning, maintaining, preserving, and improving the Texas portion of the Gulf Intracoastal Waterway. GIWW parallels the Gulf of Mexico's coastline from Brownsville, at the southernmost tip of Texas, to St. Marks, Florida. This man-made channel, authorized by the United States Congress, is maintained by the U.S. Army Corps of Engineers (Corps) at a bottom width of 37.3 meters and a minimum depth of 3.7 meters. Because it is less than 7.5 meters deep, the waterway is defined as a shallow-draft canal. Nevertheless, it is an integral part of the total inland transportation system of the U. S.

Prior to 1975, the GIWW in Texas had no single local nonfederal sponsor. Various navigation districts, river authorities, and port authorities located along the GIWW attempted to coordinate local management efforts with those of the federal sponsor, the United States Army Corps of Engineers (Corps). In 1975, the state legislature passed the Texas Coastal Waterway Act, authorizing the State of Texas to act as local nonfederal sponsor for GIWW in Texas and designating the State Highway and Public Transportation Commission, now the



Texas Transportation Commission, to act as agent for the state in fulfilling the responsibilities of the nonfederal sponsor.

The Mexican state of Tamaulipas has been actively pursuing the extension of the GIWW from Brownsville to Tampico to create an inland Mexican waterway to import and export goods. If completed, the Mexican portion of the canal is expected to handle about 19 million tons of commerce annually, chiefly agricultural products, limestone and liquid petroleum products.(Z) Presently, Tamaulipas has plans to dredge the Mexican side of the waterway, but the extent of the progress on this project has slowed due to financial constraints. In addition, Tamaulipas is not allowed to dredge within 3.2 km of the Rio Grande. It would be up to the U.S. to connect the Mexican side of the waterway to the U.S. side, and most presumably this would entail attaining a Presidential Permit. Complicating this matter, TxDOT's status as a nonfederal sponsor of the GIWW is limited to the current portions of the waterway from the Sabine River to the ship channel into the Port of Brownsville. In order to extend TxDOT's authority to an additional length, the United States Congress would have to pass the appropriate legislation. There is some speculation that an entity such as the Brownsville Navigation District could possibly take it upon themselves to act as a nonfederal authority bypassing TxDOT. It should be noted that a Presidential Permit will be required regardless of who acts as the nonfederal authority. Presently, however, officials on the U.S. side of the border are waiting until the Mexican waterway is near completion before taking an active role in planning the connection.

Many agencies have an interest in the existing as well as the proposed extension of the GIWW. At the federal level, the Multimodal Office interacts with the International Bridge and Waterway Commission (IBWC), the U.S. Coast Guard, U.S. Fish and Wildlife Department, and the Corps of Engineers. Within the state level the Multimodal Office works with the Texas Parks and Wildlife Department, the General Land Office, the Texas Natural Resource Conservation Commission, and the Texas Historical Commission.

The Union Pacific and Southern Pacific rail merger and the privatization of the Mexican rail network are two events that will undoubtedly affect transborder movement of goods under NAFTA. The Multimodal Operations Office is currently monitoring these events

and assessing the potential impact.

Union Pacific Railroad (UP) and Southern Pacific Railroad (SP) filed a merger application on November 30, 1995. One argument UP and SP made for the merger was that the resulting railroad can provide a much stronger competitor to Burlington Northern Santa Fe (BNSF). Last year, Burlington Northern and Santa Fe merged and, according to Southern Pacific, unbalanced the western rail network and diminished the chance that SP could continue to compete.

The proposed merger faced some opposition. The Justice Department filed against the merger, but ultimately the decision rested with the Surface Transportation Board (STB), the federal agency with sole authority to rule on the merger application. The STB obtained testimony from many interested parties, including shippers, competitors, regions, and states. In Texas, the Governor's Office designated the Railroad Commission (RRC) to represent Texas. The RRC heard testimony from several parties, including TxDOT. TxDOT, with the input of the Multimodal Operations Office, recommended that Texas not favor the merger citing the inability of Texas' smaller railroads to effectively compete against UP and the BNSF. The State of Texas officially stated its opposition to the merger to the STB. In late 1996, the Surface Transportation Board approved the merger of the SP and UP railroads.

Furthermore, the Mexican government is in the process of privatizing parts of the Mexican rail network, Ferrocarriles Nacionales de Mexico (FNM). This effort in combination with the UP/SP merger could potentially change many aspects of the movement of commodities between the U.S. and Mexico.

## **TEXAS DEPARTMENT OF TRANSPORTATION**

### **PUBLIC TRANSPORTATION DIVISION(8)**

#### **Public Transportation Division Objectives and Responsibilities**

The Public Transportation Division has five main responsibilities. It prepares and updates a statewide public transportation master plan; takes applications for public transit financial assistance; administers Federal Transit Administration programs for elderly,

handicapped, and rural public transportation; administers the State Public Transportation Grant Fund to city and rural providers; and sponsors and monitors research and development in public transportation.

### **Public Transportation Division Border Activities**

Presently, cross border bus service other than charter bus service is not allowed. Under the provisions of NAFTA, Mexican bus companies were scheduled to become eligible to seek authority for regular-route, scheduled service, beginning or ending in Mexico and extending to points in the United States effective January 1, 1997. In addition, Mexican bus companies are scheduled to become eligible to provide domestic interstate service between points in the United States in 2001.

U. S. carriers are concerned they will be at a considerable disadvantage when Mexican carriers begin providing regular-route service into the U.S. Foremost, there is confusion over the issue of driver time. In the U.S., driver time is heavily regulated, and U.S. carriers are concerned that Mexican drivers, once allowed in the U.S., will not be regulated and monitored in the same way. For instance, where the driver time starts, whether at the border or at the trip origination, is an issue. Furthermore, U.S. carriers are concerned that this issue will not be dealt with formally under harmonization. In addition, Mexican bus drivers make less money than U.S. bus drivers, and U.S. carriers and bus drivers are afraid this puts them at a disadvantage.

Also, U.S. carriers are concerned that when they are allowed to cross the border into Mexico, their insurance providers will charge additional, possibly substantial, fees for traveling outside the U.S. Increasing insurance costs combined with border crossing delays could make the interstate service economically infeasible.

The City of Laredo is planning an intermodal transit center to be located in the central business district. The facility will provide a transfer point for 18 city bus routes, a park and ride facility for up to 500 vehicles, and a loading area for private intercity as well as rural transit operators. This project is partly funded through federal grants. In addition, the City of

Del Rio has just renovated the Del Rio Depot and annex into an intermodal facility. Federal grant monies administered by TxDOT largely funded this project.

## **TEXAS DEPARTMENT OF TRANSPORTATION**

### **TRAFFIC OPERATIONS DIVISION(2)**

#### **Traffic Operations Division Objectives and Responsibilities**

The mission of the Traffic Operations Division is to communicate to travelers the information they needed to safely and efficiently use the transportation system. The duties of the Traffic Operations Division can be divided into the following sections: traffic engineering, railroad, traffic safety, traffic management, and management support. The traffic engineering section is responsible for the engineering design of traffic control devices (signs, signals, and markings), illumination systems, safety and traffic operations programs, and maintenance and analysis of TxDOT accident records. The railroad section is responsible for the railroad signals, replanking, and agreements concerning grade separation facilities. This section provides service and liaison to the railroads, districts, Federal Highway Administration (FHWA), Federal Railroad Administration, local government entities, and the citizens of Texas. The traffic safety section oversees the Texas Traffic Safety Program, which is designed to reduce traffic accidents. The Traffic Management Section directs a traffic engineering and automation staff to apply automated traffic management systems to ease traffic congestion. The Management Support Section provides administrative support to the division.

#### **Traffic Operations Division Activities at Border**

This division is taking part in Senator Judith Zaffirini's's Laredo Hazardous Substances Task Force as the division is often responsible for installing and maintaining signs designating "hazardous substances route." Hazardous materials can be transported on the state highway system. However, when that state system enters a municipality, the municipality can designate

a hazardous materials route by submitting a plan to the Department of Public Safety (DPS). Generally, the DPS will ask the Traffic Operations Division to review the proposed route designation before approving it. After the route is approved, the municipality, whose responsibility it is to sign the route, will most often contact the Traffic Operations Division to install and maintain the signs within the municipality.

In addition, the Traffic Operations Division undertook and completed a project to sign mileage to some Mexican cities close to the Texas-Mexico border, recognizing non-U.S. destinations in terms of signing operations.

The Traffic Operations Division is currently researching the issue of bilingual signing on the Texas-Mexico border. The purpose of the study is to identify the types and placement of signs that are most needed (as there are limited funds for bilingual signing).

Also, this division is taking part in Senator Judith Zaffirini's Laredo Hazardous Substance Task Force and works with municipal entities and with the DPS on hazardous materials route designation.

This division works with the FHWA on signing issues. In fact, the FHWA has to approve The Texas Manual on Uniform Traffic Control Devices. Also, FHWA and TxDOT work together on bilingual signing issues. Bilingual signing is not covered in the manual and, therefore, must get approval from FHWA.

This division also interacts with the National Highway Traffic Safety Administration (NHTSA). The Traffic Safety Section manages approximately \$10.4 million annually in NHTSA and FHWA funds for the statewide highway safety program. This division's Traffic Safety Section coordinates various public safety education programs.

The Railroad Section of this division works with railroad companies for at grade crossing agreements. The division then works with the TxDOT Design Division until the project goes to construction.



**TEXAS DEPARTMENT OF TRANSPORTATION**  
**TRANSPORTATION PLANNING AND PROGRAMMING DIVISION(10)**

**Transportation Planning and Programming Division Objectives and Responsibilities**

Basic responsibilities of this division include urban transportation studies, road inventory, mapping and map distribution, traffic volume analysis, traffic forecasting, vehicle weight and classification studies, speed and origin-destination studies, federal highway performance monitoring, and financial and road life data. Also, the Transportation Planning and Programming Division (TPP) administers four major projects: the Statewide Transportation Improvement Plan, the Metropolitan Planning Organization Process, the Project Development Plan, and the Scenic Byways Route Designation.

**Transportation Planning and Programming Division Border Activities**

In the late 1980's to early 1990's, TPP completed many Texas-Mexico border transportation studies and initiated many of the present day transportation related contacts with Mexico. Then, in the early 1990's as NAFTA was developing, the International Relations Office (IRO) was created, and many of the Planning and Programming Division's efforts were handed over to this new division. However, the Planning and Programming Division continues to work with the border districts to develop their transportation programs. For example, the division works with the district engineers to attain NAFTA discretionary funds for their infrastructure.

In Laredo, this division is presently involved with the Texas Turnpike Authority, and the City of Laredo trying to develop a plan for financing Bridge IV. In addition, TPP is now involved in TxDOT's Presidential Permit approval for international bridges (see Design Division entry for further explanation of Presidential Permit process).

TPP's primary border related concern is improving TxDOT's ability to improve planning activities with Mexico. Thus, TPP feels that despite recent changes in the Mexican federalist system, which have granted somewhat more power to the historically weak state governments, little planning has been done at the local level. Thus, TPP has difficulty identifying their counterparts in Mexico and, therefore, cannot successfully coordinate planning activities with Mexico.

## **TEXAS DEPARTMENT OF TRANSPORTATION VEHICLE TITLES AND REGISTRATION DIVISION(11)**

### **Vehicle Titles and Registration Division Objectives and Responsibilities**

The Vehicle Titles and Registration Division is responsible for issuing and recording registrations for Texas motor vehicles. This division registers vehicles, issues certificates of title, and collects fees using the 254 county tax assessor-collectors as agents. In addition, this division is responsible for temporary registration permits. The Vehicle Titles and Registration Division generated more than \$611 million to the Highway Fund during the calendar year 1994.

### **Vehicle Titles and Registration Division Activities at Border**

The Vehicle Titles and Registration Division administers motor vehicle registration, including motor carrier tractors and trailers. (For distinctions between the Vehicle Titles and Registration Division and the Motor Carrier Division see the Motor Carrier Division entry).

The 74th Texas Legislature passed two pieces of legislation that address NAFTA related issues affecting the Vehicle Title and Registration Division. Under Senate Bill 981, TxDOT's Vehicle Titles and Registration Division was authorized to issue annual registration permits to be recognized as legal registration for the movement of foreign commercial vehicles on Texas highways. The fee associated with the permit is the same fee that Texas truckers

pay, and its cost is based on the registration prescribed by gross vehicle weight classification for commercial vehicle registration in Texas. The law requires proof of financial responsibility to obtain an annual registration permit, and this proof must come from an insurance provider authorized to do business in Texas.

Under Senate Bill 1420, TxDOT was further authorized to issue 72 and 144-hour permits for commercial vehicles owned by residents of Mexico. It, too, requires proof of financial responsibility from an insurance provider authorized to do business in Texas. The 72-hour permit costs \$25. The 144-hour permit costs \$50. These bills were to become effective on September 1, 1995.

To implement this legislation, TxDOT proposed emergency adoption of rules that provided that the informal understandings would remain in effect through December 17, 1995. On or after December 18, 1995, all persons would be required to secure and display that applicable temporary permits for the movement of their vehicles on Texas highways. These rules were passed on November 30, 1995, as stated in the minute order number 106436. Due to the postponement of the phase of NAFTA that would allow transborder trucking, the paired city understandings are still operating in the Texas-Mexico border area.

In summary, Mexican trucks can travel according to the provisions of the informal understandings, exempted from registration as before. They are subject to the some safety requirements, weight limits, and financial responsibility requirements as Texas-registered trucks. No Mexican trucks are allowed beyond the narrowly defined geographic area described in the informal understandings at this time.

TxDOT has understood and respected the importance of the informal paired city understandings with the Mexican States of Coahuila and Chihuahua and the bilateral understanding with the Mexican state of Tamaulipas, and has participated in negotiations addressing these border area commercial vehicle operations for over 40 years. The Vehicle Titles and Registration Division in particular understands that commercial vehicle operation along the Texas and Mexico border have been important to the economies of these areas for many years and is prepared to provide annual registrations to all trucks meeting the requirements of Texas law.

## **TEXAS DEPARTMENT OF COMMERCE(12)**

### **Texas Department of Commerce Objectives and Responsibilities**

The Office of Trade and International Relations (OTIR) of the Texas Department of Commerce exists to help position Texas as a globally competitive economic region. OTIR assists Texas businesses in gaining access to world markets through trade shows, facilitation of export counseling, collection and dissemination of trade leads, trade-related research and analysis, and partnerships with entities such as the U.S. Department of Commerce and the Japan External Trade Organization. OTIR also oversees the State of Texas office in Mexico City, which works to facilitate commerce between Texas and Mexican businesses.

### **Texas Department of Commerce Border Activities**

Although the Department of Commerce has no official responsibilities in the transportation sector, they do take an interest in transportation projects as they might facilitate commerce and trade between Texas and Mexico. The Department, and specifically, the OTIR participate on several multi-agency committees and task forces that address border transportation issues. Often, OTIR participation is informal and is initiated through the International Relations Office (IRO) of the Texas Department of Transportation.

## **TEXAS COMPTROLLER OF PUBLIC ACCOUNTS(13)**

### **Comptroller of Public Accounts Objectives and Responsibilities**

The Comptroller of Public Accounts is responsible for collecting and administering the State of Texas' tax revenues. The state's major taxes and fees include the sales tax, the motor vehicle tax, franchise tax, inheritance tax, amusement tax, hotel and motel tax, minerals tax,

and fuels tax. This report focuses on the state fuel tax. The Comptroller of Public Accounts also provides the research and statistics necessary for revenue estimating and certification. Chapter 153 of the Tax Code states the statutory responsibilities and powers of the Comptroller of Public Accounts.

### **Comptroller of Public Accounts Border Activities**

As part of its tax collecting duties, the Comptroller of Public Accounts collects state gasoline taxes on commercial carriers and is responsible for collecting Texas' portion of this tax from out-of-state commercial motor carriers. Often, carriers will purchase gasoline, therefore paying fuel taxes in one state while driving in (and thus producing wear and tear on the roads of) another state. This situation also applies to the Canadian provinces: within Canada as well as between Canadian provinces and states in the U.S. To compensate for this imbalance, the Comptroller of Public Accounts has mechanisms for addressing this issue; an interstate motor carrier can acquire an interstate trucker permit or purchase a trip permit. The interstate trucker permit requires no initial cost, and the carrier is issued a cab card. The carrier reports quarterly to the Comptroller's Office the number of miles driven in each state as well as the amount of gasoline purchased in each state. The carrier's account is either debited or credited to ensure each state collects the appropriate amount of taxes based on miles driven in that state. Under this system, a commercial carrier must report to every state that carrier enters. The other option, a trip permit, costs \$50 and is valid for one entry into Texas. There are no extensive reporting requirements for this permit.

Since July 1, 1995, interstate truckers traveling in Texas have a third option. Under the international fuel tax agreement, a commercial carrier can register in a base state or province and fill out one report similar to the interstate trucker permit report. The carrier is issued decals for each side of the vehicle and a cab card. The carrier reports only to the base state or province, and this state or province reconciles its accounts with every other state or province. Filing only one report considerably reduces the amount of paperwork that carriers and truckers must complete. Most carriers are participating in this program, and in Texas,



there are over 3,500 carriers registered with the Comptroller's Office.

The U.S. and Canada have been successfully reconciling fuel taxes for many years. The new international fuel tax agreement is very successful. However, the process does not work as smoothly between the U.S. and Mexico. Mexico cannot enter into the international fuel tax agreement due to the way its federal government interacts with its state governments. It is important to understand that it is Mexico's decision, and not any other government's decision, not to enter into the international fuel tax agreement. Therefore, Mexican carriers entering the U.S. must acquire either an interstate trucker permit or purchase a trip permit.

The Comptroller of Public Accounts works closely with the DPS to ensure enforcement of the fuel tax laws within the entire state of Texas as well as at the Texas-Mexico border. Although the Comptroller's Office does have enforcement authority and mechanisms for fining violators, the personnel at the Comptroller's Office are not peace officers and prefer to have the assistance of the DPS when checking motor carriers for compliance.

## **TEXAS DEPARTMENT OF PUBLIC SAFETY(14)**

### **Texas Department of Public Safety Objectives and Responsibilities**

The Texas Department of Public Safety (DPS) was created in 1935 and currently has responsibilities in three major areas: traffic law enforcement, criminal law enforcement, and emergency management. The DPS is an organization with broad authority and responsibility for law enforcement and the general maintenance of public safety. This report will be concerned with the DPS as it relates to transborder traffic, which is affected by the implementation of NAFTA.

The Traffic Law Enforcement Division has a leading role in transborder traffic. This division serves as the state's police authority and is responsible for the supervision of traffic on Texas roadways. It also administers and enforces the state driver and vehicle regulatory laws.

The following services/programs are under the Traffic Law Enforcement Division:

- The License and Weight Service enforces laws regulating weight and registration and other motor carrier regulations governing the transportation of property by commercial vehicles.
- The Vehicle Inspection Service oversees the Commercial Vehicle Inspection Program.
- The Highway Patrol is heavily involved in the interdiction of illegal drugs being transported on the state's highway system.
- The Emergency Management Service in the Administration Division of the DPS coordinates state response relief and recovery operations for all disasters. This includes response to disasters related to the transport of hazardous materials.

Under the Texas Administrative Code (TAC), Title 37, the DPS is charged with the responsibility of enforcing several regulations.

- TAC, Title 37, Section 3.59, charges the DPS with the responsibility of enforcing regulations governing the transport of hazardous materials.
- TAC, Title 37, Section 3.62, charges the DPS with the responsibility of enforcing regulations governing transportation safety.
- TAC, Title 37, Section 11.1, charges the DPS with the responsibility of enforcing registration requirements of commercial vehicles. This enforcement will be based on the statutory provisions of Texas Civil Statutes, Articles 6675a-1 through 6675a-17.
- TAC, Title 37, Section 11.41, states the DPS will adopt the Texas Railroad Commission Motor Transportation Regulations, as amended.
- TAC, Title 37, Section 11.51, charges the DPS with stopping, weighing, and reducing excess cargo of loaded motor vehicles.
- TAC, Title 37, Section 16.1 addresses commercial drivers licenses.

In addition, legislation passed in the 74th legislature will cause changes in TAC, Title 37:

- SB 1420, an Act relating to temporary registration permits for commercial motor vehicles.

- SB 981, an Act relating to the registration of foreign commercial motor vehicles, trailers, and semitrailers.
- SB 3, an Act relating to the regulation of motor carriers, providing civil, administrative, and criminal penalties. Amendments to 37 TAC 3.59 and 37 TAC 3.62 are necessary to implement the provisions of Texas Civil Statutes, Article 6675d, as adopted in Senate Bill 3. In addition, SB 3 changes the underlying rules of registration by amending Chapter 1, Title 116, V.T.C.S., by adding Article 6675c.
- HB 180 regulation of freight forwarders.
- HB 962 regulation of commercial carriers.

### **Texas Department of Public Safety Border Activities**

The State of Texas has adopted the U.S. Federal Motor Carrier Safety Regulations. Therefore, all commercial vehicles entering the U.S. from Mexico must comply with these regulations. The DPS is currently performing Level I and Level II inspections at the border in order to enforce these regulations. A Level I Inspection, or North American Standard Inspection, is an inspection that includes each of the items specified under the North American Uniform Out-Of-Service Criteria. As a minimum, North American Standard inspections must include examination of: driver's license, medical examiner's certificate and waiver if applicable, alcohol and drugs, driver's record of duty status as required, hours of service, seat belt, vehicle inspection report, brake system, steering mechanism, wheels and rims, tires, coupling devices, suspension, frame, fuel system, exhaust system, windshield glazing and wipers, lighting devices, safe loading, and hazardous materials requirements as applicable.

A Level II Inspection, or Walk-Around-Driver/Vehicle Inspection, is an examination that is conducted without inspecting underneath the vehicle. This inspection includes everything a Level I Inspection includes except for items that require inspecting under the vehicle. For example, brake and suspension inspections are visual inspections only.

In the City of Laredo, the DPS, the U.S. Department of Transportation, and the Laredo Police Department are authorized to complete vehicle safety inspections. In fact, DPS has been responsible for training the local police department to perform Level I and Level II Inspections. There is a shortage of DPS inspectors if the goal is to maintain a constant presence at the border. Before being prepared to do inspections, a DPS officer must complete the following training: an 80 hour inspection training course, a 40 hour cargo tank inspection training course, a 40 hour hazardous material training course, and a 40 hour basic commercial traffic course. Obviously, it will take a commitment of time and resources to train more officers to do these inspections. Presently, in Laredo there are 4 (soon to be 5) inspectors who do inspections. Presently, the DPS maintains its presence there 6 hours per day, 5 days per week. Due to the limited personnel and number of hours per day they must be stationed at the border crossings, DPS troopers have a difficult time maintaining consistent and effective safety enforcement. In order to maintain a presence for 18 hours per day, seven days per week, a minimum of 25 trained officers are needed.

DPS is concerned with developing ways of selecting trucks for inspection. For example, in the city of Laredo, approximately 4000 trucks cross the border per day. Due to the drayage operation, many trucks cross more than once per day. Therefore, it may be more accurate to say that approximately 1000 trucks cross the border 4 times per day. Presently, the four troopers completing inspections generally choose trucks that appear to have violations. In addition, the troopers are often familiar with the trucks as well as with the drivers and have some knowledge of potential violators. This method of choosing vehicles for inspection, although it has the obvious benefit of curtailing the number of trucks with violations from getting across the border, does not allow the DPS to get accurate out-of-service rates.

The DPS is concerned with false insurance cards. Presently, a carrier can purchase insurance, become registered, and stop making payment on his/her insurance. It often takes the authorities several months to identify these carriers. The DPS believes it is necessary to develop methods to identify these carriers in a more timely way.

The DPS is concerned with performing weight inspections along the border. For example, in Laredo, it is unclear whether the DPS has the authority to perform weight inspections. Outside of the city limits, there is no confusion that the DPS has this authority. There may be a need for additional legislation to clear up this issue.

The DPS interacts closely with several divisions of the Texas Department of Transportation (TxDOT) on issues such as motor carrier registration enforcement and international motor carrier size and weight enforcement. In addition, the DPS interacts with TxDOT's International Relations Office on a less formal basis on several issues, including overall efforts to make border crossings more efficient and less time consuming for motor carriers. The DPS coordinates with the Railroad Commission's Liquid Petroleum (LP) Gas Division on the issue of LP Gas inspections at the border. The DPS works with the Texas Department of Insurance (TDI) in order to ensure insurance compliance of international motor carriers. The DPS coordinates with the Comptroller of Public Accounts in an effort to enforce fuel permit requirements and with the Texas Natural Resource Conservation Commission (TNRCC) on issues of the transport of hazardous materials, specifically the enforcement of hazardous materials placarding requirements.

## **OFFICE OF THE GOVERNOR OF TEXAS(15)**

### **Governor's Office Policy Council**

#### *Governor's Office Policy Council Objectives and Responsibilities*

The Governor's Office Policy Council, organized by issue areas, was created to help ensure that state agencies and commissions implement the governor's policies. Council Directors are the governor's chief liaisons to board members, state agencies, and any special committees or projects authorized by the governor. Other council responsibilities include evaluation and recommendation of potential candidates for appointment to agency positions and analysis of legislative and budget proposals in co-operation with the Legislative Office or the Budget and Planning Office.



### *Governor's Office Policy Council Border Activities*

The Transportation Division of the Policy Council is primarily policy oriented. This office presently takes a very pro NAFTA stance. In fact, when the Secretary of Transportation, Federico Peña, stated that phase two of NAFTA would be put on hold in order for states to become prepared for the increased truck traffic, the Governor's Office stated that Texas was ready for the truck traffic. Although this office is concerned with issues of safety and control of damages, it wants to facilitate any economic benefits Texas will derive from moving forward with phase two of NAFTA. In addition, when NAFTA was postponed, this office did suggest to TxDOT to revert back to paired city agreements, so that at the very least, previous economic arrangements could continue.

Also, the Governor's Office can affect border transportation policy indirectly through appointments to state agencies such as the Texas Transportation Commission and the Public Safety Commission. The Governor's Office is not an advocate for any particular corridors or counties. This office believes its role should be to facilitate whichever corridor emerges naturally from increased U.S.-Mexico trade.

The Governor's Office works closely with the majority of the TxDOT divisions and state agencies represented in this report on policy and planning issues surrounding Texas-Mexico transportation. For example, in April of 1996, the Transportation Division of the Policy Council facilitated a presentation of the North American Trade Automation Prototype (NATAP) by International Trade Data Systems. This group presented an experimental technology-based prototype whose purpose is to streamline border crossings for commercial vehicles and was soliciting participation of the key Texas border crossings. The Transportation Division gathered representatives from TxDOT, the DPS, the Office of Attorney General, the Office of the Secretary of State, state universities, and transportation consultants who might have an interest in this project. In addition, the Transportation Division concerns itself with Senate and House committee work and legislation efforts that might have an impact on the Texas transportation system, including efforts that have specific effects on border transportation systems.

## **RAILROAD COMMISSION OF TEXAS(16)**

### **Railroad Commission of Texas Objectives and Responsibilities**

The Railroad Commission (RRC) of Texas was created in 1891 for the primary purpose of regulating the railroad industry within the State. Today's Commission, pursuant to statute and its adopted rules and regulations, fulfills much more varied duties and responsibilities. This section of the report will concentrate on the Liquid Petroleum Division. The Liquid Petroleum Gas Division of this agency regulates through licensing, safety inspection and accident investigation the manufacture, storage, and transport of liquid petroleum gas (LP gas, commonly known as propane and butane), compressed natural gas (CNG) and liquefied natural gas (LNG).

The Liquid Petroleum Gas Division administers the laws of Texas and the rules and standards of the commission relating to LP gas, CNG, and LNG. The Texas statutes that apply to the regulation of these gases are in §113 and §116 of the Texas Natural Resources Code. The Liquefied Petroleum Gas Division's safety rules apply to the design, construction, location, and operation of liquefied petroleum gas systems, equipment, and appliances.

### **Railroad Commission of Texas Border Activities**

Most often these rules come into play at the border because Mexican carriers will cross the border, come into Texas with an empty tank and fill up with LP gas and return to Mexico. In order for a Mexican carrier to be eligible to transport LP gas, it is required to hold a Category C or a Category E license. Several Mexican carriers presently hold these licenses. A Category C license for carriers authorizes the transportation of LP gas by transport, including the loading and unloading of LP gas, and the installation and repair of transport systems (A-15). A Category E license for retail and wholesale dealers authorizes the storage, sale, transportation, and distribution of LP gas at retail and wholesale dealers (A-15). As of April 1996, the original fee for either of these two licenses is \$500. The renewal fee for either

of these two licenses is \$150 annually.

In addition, the actual bobtail truck, semitrailer, or other motor vehicle either equipped with LP gas cargo tanks or used primarily for transporting LP gas in portable containers must be registered with the Commission. The fee for motor vehicles equipped with LP gas cargo tanks with A.W.C of 18,927 liters or more is \$156 annually, and the fee for a vehicle equipped with LP gas cargo tanks with A.W.C of 18,924 liters or less is \$96 annually (A-35). In addition, in order to acquire these licenses, a carrier must have proper insurance coverage, including general liability and motor vehicle coverage. Also, all drivers hauling LP gas must pass an examination and hold an operator's license with the Commission (these examinations are presently offered in Spanish as well as English).

Presently, there are provisions for Mexican carriers to transport LP gas across the border. Therefore, the LP Gas Division does not believe that their operations will change significantly when transborder trucking becomes open to border states. Although the LP Gas Division believes their operation runs smoothly with the cooperation of the Mexican carriers doing business in Texas, the LP Gas Division does believe there is a need to address the communications problems more directly at the border. In fact, the division would like to receive assistance through funding to translate important documents and information from English to Spanish as well as from Spanish to English.

The Railroad Commission works with the Department of Public Safety and U.S. Customs to train officers to inspect LP gas cargo tanks as these tanks can potentially be hazardous.

## **TEXAS ALCOHOLIC BEVERAGE COMMISSION(17)**

### **Texas Alcoholic Beverage Commission Objectives and Responsibilities**

The Texas Alcoholic Beverage Commission (TABC) is charged with the administration and enforcement of the Texas Alcoholic Beverage Code, which establishes guidelines for the activities of all persons engaged in any phase of the alcoholic beverage business.

The commission inspects, supervises, and regulates every phase of the business of manufacturing, importing, exporting, transporting, storing, selling, advertising, labeling, and distributing alcoholic beverages. Any entity who sells alcohol to any person or other entity in Texas is under the purview of the TABC. TABC divides entities into manufacturer, wholesaler or distributor, and retail. For example, a non-resident manufacture license is sold to Mexican breweries who want to sell beer to Texas wholesalers/distributors, and a non-resident sellers permit is sold to Mexican manufacturers who want to sell alcohol (other than beer) to a Texas wholesaler/distributor. Importantly, these permits are not necessarily checked or enforced at the border but at the endpoints of the transaction. Therefore, the TABC has no presence on the border for commercial distribution of alcoholic beverages.

#### **Texas Alcoholic Beverage Commission Border Activities**

TABC has approximately 80 persons (tax compliance officers) stationed at the Texas/Mexico border at stations most often leased from the General Services Administration. These officers are responsible for collecting taxes and fees on alcoholic beverages brought into Texas from Mexico. At the border, TABC collects taxes and fees from individuals. Commercial taxes and fees are collected by other methods. It should be noted that TABC is generally the only state agency stationed at the bridges. DPS, when present, generally carries out their responsibilities away from the bridge so as not to cause traffic delays.

The TABC collects in excess of \$170 million annually in taxes and fees at the border, which aid in the financing of the state's public schools, state and local governments, research, human services and other areas in which state government provides services to all Texans. The taxes and fees go to the following funds: 3/4 to the general revenue fund, 5/24 to the available school fund, and 1/24 to the foundation school fund.

TABC is also responsible for collecting taxes and fees on cigarettes on behalf of the State Treasury Department. TABC collects the cigarette tax as a service to the Treasury and simply forwards the money collected to the Treasury.



In addition to the tax and fee collection, the TABC has powers to regulate the importation of alcohol and cigarettes. Laws authorize the Taxpayer Compliance Officers to seize and destroy alcoholic beverages over the importation limits as well as those alcoholic beverages in the possession of minors or intoxicated persons. Cigarettes in the possession of persons under the age of 18 can also be confiscated and destroyed.

TABC could benefit from better exchange of information with U.S. Customs regarding commercial carriers of alcoholic beverages. TABC indirectly gathers information about alcohol in transport from the endpoints of the commercial transaction but feels the information U.S. Customs gathers at the actual border could be helpful to them.

Joint meetings to exchange information with officials representing the other agencies on the bridge could be beneficial. For example, TABC could more efficiently schedule personnel if U.S. Customs shared statistics on past and projected traffic volumes.

TABC has a limited role on the border and usually stations only one or two people per bridge. For example, in Laredo there is usually one or two persons stationed at the new bridge, one person on pedestrian walkway at the old bridge, and one or two persons on the auto part of the old bridge. Currently, there is no one stationed at the Solidarity Bridge at Colombia. There is simply not enough traffic there to warrant stationing of personnel. However, any persons carrying liquor across the border are still required to pay the taxes on the liquor.

Also, TABC feels it is important to remember that every bridge is a unique story. For example, the City of McAllen owns the bridge at Hidalgo. This changes many of the relationships. At this bridge, the GSA does not hold leases, but the city does.

## **TEXAS DEPARTMENT OF INSURANCE(18)**

### **Texas Department of Insurance Objectives and Responsibilities**

The Texas Department of Insurance (TDI) regulates the state's insurance industry under the provisions of the Texas Insurance Code and other applicable statutes. TDI works for the availability of quality insurance products for all Texans at reasonable prices and under



reasonable terms and strives to protect the public from the adverse consequences of insurer insolvency. TDI will enforce fraud, misrepresentation and unfair practices. TDI will educate the public about insurance so that Texans can make informed choices, and TDI will insist that the industry be responsible to its customers.

### **Texas Department of Insurance Border Activities**

With the passage of the North American Free Trade Agreement, TDI created the International Regulatory Counsel's Office. The purpose of this office is to help reduce licensing barriers for insurers outside the U.S., coordinate enforcement of insurance laws and anti-fraud measures, resolve legal disputes and create opportunities for joint business ventures (TDI, 1995 Annual Report, 25).

It should be noted that there is no federal regulatory body for insurance. The National Association of Insurance Commissioners (NAIC) is the organization of insurance regulators from the 50 states, the District of Columbia and the four U.S. territories. The NAIC provides a forum for the development of uniform policy when uniformity is appropriate. A state regulator's primary responsibility is to protect the interests of insurance consumers, and the NAIC helps regulators fulfill that obligation.

Senate Bill 3 passed by the 74th Texas Legislature has an effect on insurance agents. Under TxDOT implementation rules that took effect December 5, 1995, Mexican and domestic motor carriers must file proof of liability insurance coverage in the following amounts per occurrence (combined single limits):

| <u>Type of Vehicle</u>  | <u>Minimum Insurance Level</u> |
|---|--------------------------------|
| <i>Tow Trucks</i> (gross vehicle weight under 11,818 kg)  | \$300,000                      |
| <i>Buses</i> (15 - 25 passengers)   | \$500,000                      |
| <i>Buses</i> (more than 25 passengers)  | \$5,000,000                    |
| <i>Farm trucks</i> (gross vehicle weight 11,818 kg or more)   | \$500,000                      |
| <i>Commercial motor vehicles</i> , including tow trucks, over 26,000 lb.  | \$500,000                      |
| <i>Commercial motor vehicles - Oil</i> listed in 49 CFR §172.101;<br>hazardous waste, hazardous materials and hazardous substances<br>defined in 49 CFR §171.8 and listed in CFR §172.101.  | \$1,000,000                    |
| <i>Commercial motor vehicles - Hazardous substances</i> , as defined<br>in 49 CFR §171.8, transported in cargo tanks, portable tanks, or<br>hopper-type vehicles with capacities in excess of 13,300 liters;<br>or in bulk Class A or B explosives, poison gas (Poison A), liquefied<br>compressed gas or compressed gas; or highway route controlled<br>quantity radioactive materials as defined in 49 CFR §173.403 | \$5,000,000                    |

Coverage must be with a licensed company or eligible surplus lines carrier or through a self-insurance mechanism approved by TxDOT (International Regulatory Counsel's Office Memorandum).

Also, new TxDOT rules continue a program under which agents may charge up to \$10 to affix an international registration stamp to a vehicle's temporary insurance policy to show current coverage. An agent may issue the stamps only if he or she maintains evidence of a master policy on file with TxDOT. A stamp is valid for one trip of up to seven days' duration. To sell the stamps, an agent must be bonded and comply with TxDOT's record-keeping rules. TxDOT may enforce payment of the surety bond for failing to return unused stamps and for failure to remit payment (International Regulatory Counsel's Office Memorandum).

The TDI works closely with TxDOT and DPS to ensure proper enforcement of insurance requirements for motor carriers. TDI also participates in Senator Zaffirini's hazardous materials task force on motor carrier insurance issues as they relate to the transport of hazardous materials.

## **TEXAS NATURAL RESOURCES CONSERVATION COMMISSION(19)**

### **Texas Natural Resources Conservation Commission Objectives and Responsibilities**

The Texas Natural Resource Conservation Commission (TNRCC) is a public agency dedicated to protecting human health and the environment by ensuring clean air for Texans to breathe, an adequate supply of clean water for the benefit of Texas citizens and businesses, and proper and safe disposal of various forms of pollutants, consistent with sustainable economic development.

Section 26.127 of the Texas Water Code establishes the Texas Natural Resource Conservation Commission (TNRCC) as the principal authority in the State on matters relating to the quality of water in the State. In addition, Chapter 26, the Texas Hazardous Substances Spill Prevention and Control Act (Chapter 26, Subchapter G, Texas Water Code) stipulates that it is the policy of this State to prevent the spill or discharge of hazardous substances into the waters in the State and to cause the removal of any spills and discharges without undue delay. The TNRCC is the State's lead agency in spill response, conducts spill response for the State, and otherwise administers the provisions of the Act. The Act also authorizes the executive director of the TNRCC to act independently if no federal on-scene coordinator is present or no action is being taken by an agency of the federal government in response to a spill or discharge of oil or a hazardous substance. The executive director's response may include actions to abate and remove the spill.

The State's industrial solid waste program is implemented by TNRCC Rules, 31 Texas Administrative Code Sections 335.1-335.455, adopted under the authority of Section 4(c) of the State Solid Waste Disposal Act. These Rules include the requirement that any person who

conveys or transports hazardous waste by truck, ship, pipeline, or other means, shall clean up any hazardous waste discharge or release or take such action as may be required or approved by the TNRCC so that the hazardous waste discharge or release no longer presents a hazard to human health or the environment (see section 335.93).

#### **Texas Natural Resources Conservation Commission Border Activities**

The transport of hazardous materials across the Texas-Mexico border has become a very important topic, and ensuring that hazardous materials crossing the border are both authorized and properly handled are some of TNRCC's primary concerns. However, TNRCC is neither consistently stationed at the border nor do they have jurisdiction to stop motor vehicles entering the U.S. from Mexico (whether carrying hazardous materials or not).

In addition, the Pollution Clean-Up Division of TNRCC is concerned with increased traffic in the border areas and the potential increase in this division's work load.

## **FEDERAL AGENCIES**

There are many federal agencies involved directly and indirectly in the transboundary movement of goods and people. For instance, the U.S. State Department is involved in granting bridge permits. The General Services Administration is the landlord of federal government property at crossing points. The Internal Revenue Service (IRS) is involved in taxing Mexican motor carriers. And the Alcohol Tobacco and Firearms (ATF) is concerned with taxation on imported alcohol. However, none of these federal agencies directly interact with the taxation, control, and law enforcement of the actual transboundary movement, nor do they have an actual presence on the border.

For instance, IRS utilizes the individual states to collect highway use tax from Mexican carriers. Additionally, ATF will use a post audit system to review the tax liability of U.S. importers of alcohol.

Therefore, the federal agencies reviewed in this study consist of those that have a more direct role in the interaction of goods and people crossing the border. The following have been reviewed in this study:

1. U.S. Customs Service,
2. Immigration and Naturalization Service,
3. U.S. Border Patrol,
4. U.S. Department of Transportation,
5. Drug Enforcement Administration,
6. U.S. Department of Interior,
7. U.S. Department of Agriculture,
8. U.S. Food and Drug Administration, and
9. Environmental Protection Agency.



## **UNITED STATES CUSTOMS SERVICE**

### **Legal Basis**

Although the first Congress in 1789 established laws to facilitate the collection of duties on goods and merchandise imported in to the United States, it was not until March 3, 1927, that an act was created which legally established the U.S. Customs Service (19 U.S.C. 2071) and its mission and responsibilities. This act states:

There shall be in the Department of the Treasury a service to be known as the United States Customs Service, and a Commissioner of Customs. The Commissioner of Customs shall be at the head of the United States Customs Service, and the Commissioner of Customs shall be appointed by the Secretary of the Treasury.

### **Mission and Objectives**

The U.S. Customs Service recently reiterated its mission and goals, which ensure: "all goods entering and exiting the United States do so in accordance with all United States laws and regulations." (20) To meet this goal, Customs has developed a mission statement, which consists of six objectives:

1. Enforcing U.S. laws intended to prevent illegal trade practice;
2. Protecting the American public and environment from the introduction of prohibited hazardous and noxious products;
3. Assessing and collecting revenues in the form of duties, taxes and fees on imported merchandise;
4. Regulating the movement of persons, carriers, merchandise and commodities between the United States and other nations while facilitating the movements of all legitimate cargo, carriers, travelers, and mail;
5. Interdicting narcotics and other contraband; and
6. Enforcing certain provisions of the export control laws of the United States. (21)

Other federal statutes clarify further the responsibilities of the Customs Service:

1. Inspection of all persons and goods entering the United States;
2. Valuation of goods being imported and assessment of appropriate tariffs;
3. Interception of contraband being smuggled into the United States;
4. Enforcement of U.S. laws governing the international movement of goods, except the investigation of contraband drugs and narcotics; and
5. Turning over the investigation responsibility for all drug law enforcement cases to the Department of Justice.<sup>(22)</sup>

### **Organizational Structure**

Recently, U.S. Customs has undergone its first reorganization in thirty years with the intent to provide better service while reducing management overhead. The new structure includes: an executive management level headquartered in Washington, D.C.; a field management level; and a field operations level. In addition to these three levels, there is also the Office of the Commissioner of Customs who oversees all Customs operations.

At the top of the Customs organizational structure is the Commissioner of Customs. The President of the U.S. selects the Commissioner, and s/he reports directly to the Secretary of the Treasury. This post requires the Commissioner of Customs to carry out all duties and powers prescribed by the Secretary of Treasury.<sup>(22)</sup>

The executive management level consists of ten Assistant Commissioners, each of whom focuses on one core business process. One of the most important of the Assistant Commissioners is the Assistant Commissioner of Field Operations. This office serves as a direct link to the Customs Management Centers (CMC) at the field operations management level. This linkage helps facilitate a fluid transfer of information across the three levels.

The field management level has the responsibility of coordinating the efforts at the field operations level in order to satisfy the goals issued at the executive management level. This level contains twenty Customs Management Centers (CMCs) which now are used instead of regional offices. Each CMC contains a Special Agent-in-Charge (SAC) whose function is to

inform Resident Agents in Charge (RAC) as to any new information from the executive management level. This level also possesses the field labs needed to analyze cargo.

At the field operations level, the U.S. Customs Service is concerned with providing services at the 301 ports of entry that are under Customs jurisdiction. At this level there are 112 RACs who are responsible for facilitating the Customs processes within their own locales. Since there are only 112 RACs and 301 ports of entry, some RACs are responsible for multiple ports of entry. Within the field operations level there are also eleven Air Branches whose aim is to provide Customs with "investigative, intelligence and interdiction support." (24)

### **Impact on Transboundary Movement**

In order to understand how Customs affects international transborder movement, it is important to know what services it provides. According to Customs, it provides six service core processes, three of which could affect the crossing of cargo, equipment and/or people. (25) These three service core processes are: passenger compliance, cargo compliance, and anti-smuggling compliance. Each of these processes affects either the importer, broker or carrier of the cargo. Passenger compliance means that when passengers or crews enter a port of entry, U.S. Customs may inspect the passenger or crew for narcotics and for currency amounts of more than \$10,000. At the same time, the U.S. Customs Service looks for any other violations of Customs law. The results may be: 1) the passenger is cleared, or 2) the passenger is fined and/or arrested. Obviously, if the driver, the individual responsible for the carriage of the cargo, were to have problems at Customs, the international distribution of the cargo would be impeded.

Cargo compliance is intended to ensure that all cargo entering or leaving the United States complies with both Customs law and other federal agency laws at the border. To ensure cargo compliance, Customs routinely examines cargo. It does so on a random basis or on probable cause. If there is no problem with the cargo, it can be released. However, if Customs determines that the cargo does not comply with Customs law, then it can be seized or

a fine can be added to the duty.

The final Customs service core process is that of anti-smuggling compliance. Basically, this means that Customs is constantly searching for contraband materials such as narcotics and illegal weapons. Any smuggling violation generally leads to arrest and/or seizure of the cargo. This simply means that the individuals involved need to be certain that whatever they are transporting is not classified as contraband goods.

### **Potential Overlap**

When discussing Customs activities, it must be remembered that Customs responsibility is to make sure all U.S. laws and regulations related to the importation or exportation of goods are adhered to when goods enter or exit the country. This means that when a Federal Drug Administration (FDA) or U.S. Department of Agriculture (USDA) agent is stationed at a port of entry to monitor goods, s/he is providing a service that to some measure is a Customs responsibility. From this point of view, it can be argued that any inspection of goods by any agent other than a Customs agent may be a duplication of service. To a degree, Customs officials overlap with the Immigration and Naturalization Service (INS) and the U.S. Department of Transportation (USDOT), since Customs is supposed to facilitate the movement of people and carriers. While Customs is not responsible for processing the paperwork needed for individuals or vehicles, Customs agents in a port of entry are expected to facilitate their movement. This means that they are doing some work on the behalf of these other agencies.

Customs also has another area of overlap with the Border Patrol (BP) and the Drug Enforcement Agency (DEA). All three of these agencies are involved in anti-smuggling (i.e., drugs) efforts. This may be a clear case of overlap between the three agencies.

## **UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE**

### **Legal Basis**

Prior to 1891, the Department of Treasury, in addition to its other duties, was responsible for the enforcement of all U.S. immigration laws. Since there were few immigration laws before 1891, the Department of Treasury was able to enforce these laws adequately. At the time, potential immigrants were screened by using simple criteria: individual qualifications, national origin and whether or not the individual was a threat to U.S. labor. But given the growing objections to the increase in immigration, on March 3, 1891 the Immigration and Naturalization Service (INS) was created. This act of Congress simply stated: "There is created and established in the Department of Justice an Immigration and Naturalization Service." (26)

### **Mission and Objectives**

The mission of the INS can be divided into four main responsibilities. According to the INS, it is responsible for:

1. facilitating the entry of persons legally admissible as visitors or as immigrants to the United States,
2. granting benefits under the Immigration and Naturalization Act, as amended, including providing assistance to those seeking permanent resident status or naturalization,
3. preventing unlawful entry, employment, or receipt of benefits by those who are not entitled to them, and
4. apprehending or removing those aliens who enter or remain illegally in the United States and/or whose stay is not in the public interest. (27)



## **Organizational Structure**

The INS organizational structure contains seven levels. The INS Commissioner, who reports to the U.S. Attorney General, oversees all INS activities. Essentially, the organizational structure of the INS can be divided into two types of functions: operations headed by the Executive Associate Commissioner for Operations and management headed by the Executive Associate Commissioner for Management. The Commissioner for operations is directly responsible for the activities at the district offices and the Border Patrol Sectors. In all, there are thirty-one district offices and twenty-one border patrol sectors. INS also maintains three offices outside the U.S., one each in Bangkok, Thailand; Mexico City, Mexico; and Rome, Italy. The Commissioner of Management is responsible for the activities that take place at the regional offices. It is these regional offices that provide administrative support to the district offices and other field offices.

## **Impact on Transboundary Movement**

Because INS has the authority to demand appropriate documentation to enter the U.S., INS impacts international distribution every time its agents stop individuals entering a U.S. port. If the individual possesses the proper documentation, there is little to no delay. For example, an American bringing goods in from Mexico can pass rapidly through INS by simply presenting a U.S. passport or a driver's license. However, if the individual does not have the proper documentation, there can be considerable delay. For example, Mexican truck drivers who deliver cargo to the U.S. must meet INS requirements every time they enter the country. They have two options: 1) they can present a passport containing the proper visa, or 2) they can obtain a Mexican Border Crossing Card (Form I-186 or I-586).<sup>(28)</sup> If the Mexican truck driver already possesses the border crossing card or the appropriate visa, any delay caused by the INS should be minimal since INS agents only have to review the documentation.

INS agents also have the authority to search cargo and vehicles for aliens and stowaways if they feel that it is necessary. As with U.S. Customs Service, INS may stop and question the entry of a person on a random basis or on probable cause. Obviously, this type of inspection could be very time consuming. Moreover, INS also has the authority to demand proper documentation from all crew members of a vehicle.(29) This verification of multiple documents can also add time to the international movement process.

### **Potential Overlap**

The INS has a major area of overlapping jurisdictions with the Border Patrol since both agencies are concerned with the legal entry into and presence of foreigners in the United States. It seems that geographic factors differentiate jurisdictions, for instance, U.S. Customs at ports of entry, Border Patrol within the twenty-five mile area from the U.S. border, and INS at both ports of entry and within the territory of the United States.

There is also some degree of overlap between the INS and the DOT, since both agencies stop trucks entering the U.S. for their own reasons. The DOT is interested in vehicular information, while the INS pursues visa information. In this case, there is no real duplication of a service, but there is an obvious inefficiency because these activities are often done at different locations.

## **UNITED STATES BORDER PATROL**

### **Legal Basis**

The United States Border Patrol is the enforcement arm of the Immigration and Naturalization Service with a broad responsibility to protect the integrity of the U.S. international border, particularly the U.S.-Mexico border. The Border Patrol gets its operational authority from the Immigration and Nationality Act, prepared by the Committee on the Judiciary of the United States House of Representatives in April of 1992.

This act mandates that the Attorney General shall be in charge of "administration and enforcement" of the Immigration and Nationality Act. The act states that:

He [the Attorney General] shall have control, direction, and supervision of all employees and of all the files and records of the [Immigration and Nationality] Service. He shall establish such regulations; prescribe such forms of bond, reports, entries, and other papers; issue each such instructions; and perform such other acts as he deems necessary for carrying out his authority under the provisions of this Act. He may require or authorize any employee of the Service or the Department of Justice to perform or exercise any of the powers, privileges, or duties conferred or imposed by this Act or regulations issued thereunder upon any other employee of the Service. He shall have the power and duty to control and guard the boundaries and borders of the United States against the illegal entry of aliens and shall, in his discretion, appoint for that purpose such number of employees of the Service as to him shall appear necessary and proper. He is authorized to confer or impose upon any employee of the United States, which the consent of the head of the Department or other independent establishment under whose jurisdiction the employee is serving, any of the powers, privileges, or duties conferred or imposed by this Act or regulations issued thereunder upon officers or employees of the Service.(30)

### **Mission and Objectives**

The Border Patrol Strategic Plan, 1994 and Beyond spells out the mission for the Border Patrol:

The mission of the United States Border Patrol is to secure and protect the external boundaries of the United States, preventing illegal entry and detecting, interdicting and apprehending undocumented entrants, smugglers, contraband, and violators or other laws.(31)

Ending the mission statement with "apprehending . . . violators of other laws" clearly indicates the broad authority of the Border Patrol. The Border Patrol's Strategic Plan states that it has many more implied tasks such as seizing vehicles, gathering intelligence, and pursuing employer sanctions cases, all of which may have a direct effect on international transborder movement of individuals.

The Immigration and Nationality Act clearly spells out objectives for the Border Patrol.

The Act states that employees of the Service, including Border Patrol Officers, shall:

. . . have the power without warrant -- (1) to interrogate any alien or person believed to be an alien as to his right to remain in the United States; (2) to arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation made in pursuance of law regulating the admission, excluding, or expulsion of aliens, or to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest; . . . (3) within a reasonable distance from any external boundary of the United States, to board and search for aliens any vessel within the territorial waters of the United States and any railway car, aircraft, conveyance, or vehicle, and within a distance of twenty-five miles from any such external boundary to have access to private lands, but not dwellings for the purpose of patrolling the border to prevent the illegal entry of aliens into the United States; (4) to make arrests for felonies which have been committed and which are cognizable under any law of the United States regulating the admission, excluding, or expulsion of aliens, if he has reason to believe that the person so arrested is guilty of such felony and if there is likelihood of the person escaping before a warrant can be obtained for his arrest, . . . and (5) to make arrests -- (A) for any offense against the United States, if the offense is committed in the officer's or employee's presence, or (B) for any felony cognizable under the laws of the United States, if the officer or employee has reasonable grounds to believe that the person to be arrested has committed or is committing such a felony, if the officer or employee is performing duties relating to the enforcement of the immigration laws at the time of the arrest and if there is a likelihood of the person escaping before a warrant can be obtained for his arrest.(32)

The Act further states that employees of the Service may carry firearms and may search any person and his or her articles, if he or she is seeking entry into the United States. Finally, another main objective of the Border Patrol, and one which is becoming a major goal, is to detect and prevent the smuggling of narcotics into the United States.

## **Organizational Structure**

The United States Border Patrol is a branch of the Immigration and Naturalization Service. The INS is a department level organization of the United States Department of Justice. The Border Patrol is headquartered in Washington, D.C., and operates three regions. The three regions are the Eastern Region headquartered in Burlington, Vermont; the Central Region headquartered in Dallas, Texas; and the Western Region headquartered in Laguna Niguel, California. Each of the regional headquarters is divided into various districts with a headquarters located in each.

## **Potential Overlap**

While the Border Patrol's main responsibility is to insure that no illegal aliens gain entry into the United States, its agents do perform a number of other functions that duplicate the services offered by other federal government agencies.

The wide range of duties and responsibilities helps to create the impression that the Border Patrol's activities overlap other federal agency activities. For example, Border Patrol activities include drug interdiction as is true for U.S. Customs and the Drug Enforcement Agency, and alien interdiction as is true for the Immigration and Naturalization Service. Although geographically differentiated, these examples highlight the fact that many services provided by federal governmental agencies at the border regions of the United States are often duplicated and helped to create unnecessary congestions and confusion.

In addition, although the operation of Border Patrol check points seems to be a duplication of the services provided by other governmental agencies, such as U.S. Customs, the Drug Enforcement Agency and the Immigration and Naturalization Service that operate at established border crossings, these check points are operated to insure that any person who has gained illegal access to the United States at a point other than the established border crossings is prevented from traveling any further into the United States.



## **UNITED STATES DEPARTMENT OF TRANSPORTATION**

### **Legal Basis**

The U.S. Department of Transportation (DOT) establishes the nation's overall transportation policy. It is so large that it has a number of components or administrations which directly influence cross-border movement. Therefore, the legal basis for each of the administrations discussed will be presented separately. In general, DOT was established by law on October 15, 1966 (49 U.S.C. app. 1651 note).<sup>(33)</sup>

### **Mission and Objectives**

The Secretary of the department has established the following mission <sup>(34)</sup>:

The Department of Transportation will "Tie America Together" with a safe, technologically advanced, and efficient transportation system that promotes economic growth and international competitiveness now and in the future, and contributes to a healthy and secure environment for us and our children.

The DOT carries out its mission in four ways:

1. Setting standards for safety and other key aspects of the transportation of the transportation system and enforcing those regulations.
2. Distributing funds to state agencies, transportation providers and other transportation-related institutions to plan, construct, and operate the transportation system of America and shaping the direction of its development in partnership with state and local entities.
3. Interacting with other federal agencies to carry out broader federal mandates, such as clean air and national security policies.
4. Providing law enforcement and traffic management services for the nation's airspace and waterways.

## Organizational Structure

To accomplish its mission, the DOT has 10 operating administrations which include:

- Bureau of Transportation Statistics -- BTS,
- Federal Aviation Administration -- FAA,
- Federal Highway Administration -- FHWA,
- Federal Transit Administration -- FTA,
- National Highway Traffic Safety Administration -- NHTSA,
- Maritime Administration -- MARAD,
- Office of the Secretary -- OST,
- Research & Special Programs Administration -- RSPA, and
- United States Coast Guard -- USCG.

These administrations have jurisdictions on highway planning, development, and construction; urban mass transit; railroads; aviation; and the safety of waterways, ports, highways, and oil and gas pipelines.

Of these, the Federal Highway Administration (FHWA) is specifically and directly involved in international cross-border movement of commercial motor carriers.

### *Federal Highway Administration*

#### **Legal Basis**

The FHWA became a component of the Department of Transportation in 1967 pursuant to the Department of Transportation Act (49 U.S.C. app. 1651 note). It administers the programs of DOT according to the provisions of the law cited in section 6(a) of the act (49 U.S.C. 104) and has clear powers to conduct investigations.

#### **Sec. 506. Authority to Investigate.**

- (a) The Secretary of Transportation may begin an investigation under this chapter on the initiative of the Secretary or on complaint. If the Secretary finds that a rail carrier, motor carrier, motor carrier of migrant workers, or motor private is violating this chapter, the Secretary shall take appropriate action to compel compliance with this chapter. The Secretary may take action only after giving the carrier notice of the investigation and an opportunity for a proceeding.(35)

#### **Sec. 507. Enforcement.**

- (a) The Secretary of Transportation may bring a civil action to enforce --
  - (1) an order of the Secretary under this chapter when violated by a rail carrier; and
  - (2) this chapter or a regulation or order of the Secretary under this chapter when violated by a motor carrier, motor carrier of migrant workers, motor private carrier, or freight forwarder.
- (b) The Attorney General may, and on request of the Secretary shall, bring court proceedings to enforce this chapter or a regulation or order of the Secretary under this chapter and to prosecute a person violating this chapter or a regulation or order of the Secretary.
- (c) The Attorney General, at the request of the Secretary, may bring an action in an appropriate district court of the United States for equitable relief to redress a violation by any person of a provision of section 3102 of this title or the Motor Carrier Safety Act of 1984, or an order or regulation issued under such section or Act. Such district court shall have jurisdiction to determine any such action and may grant such relief, as is necessary or appropriate.
- (d) In a civil action brought under subsection (a)(2) of this section against a motor carrier, motor carrier or migrant workers, or motor private carrier --
  - (1) trial is in the judicial district in which the carrier operates;
  - (2) process may be served without regard to the territorial limits of the district or of the State in which the action is brought; and
  - (3) a person participating with the carrier in a violation may be joined in the civil action without regard to the residence of the person.(36)

#### **FHWA Mission and Objectives**

The FHWA is concerned with the total operation and environment of highway systems, including highway and motor carrier safety. It seeks to coordinate highways with other modes of transportation to achieve the most effective balance of transportation systems and facilities. It has powers and duties vested under chapters 5 and 31 of Title 49 of U.S. code related to motor carrier safety.(37) and (38) Additionally the ICC Termination Act of 1995 signed in December of that year further delineated authority to USDOT to oversee compliance by motor carriers, railroads, freight forwarders and transportation brokers.

The FHWA regulates commercial vehicle traffic, mainly trucks and buses. The agency regulates both interstate and foreign motor carriers, including driver's qualifications, equipment maintenance, driver's hours and hazardous material transportation. The

enforcement is civil in nature the majority of the times; however, FHWA does have the capability to request criminal sanctions in its enforcement objectives.

Through a program called "Motor Carrier Safety Assistance Program," U.S. DOT and FHWA play an important role in each state to enforce motor carrier regulations. Through funding to the states, state enforcement agencies are able to assist DOT in its regulatory responsibilities. Therefore, Texas receives revenue to enable Department of Public Safety (DPS) officers to help enforce federal regulations. U.S. DOT does not have any supervisory duties over the state, however.

### *National Highway Traffic Safety Administration*

#### **Legal Basis**

The Highway Safety Act of 1970 (23 U.S.C. 101) established the NHTSA. It carries out programs relating to the safety performance of motor vehicles and related equipment, motor vehicle drivers, occupants, and pedestrians. Under the authority of the Motor Vehicle Information and Cost Saving Act, as amended (15 U.S.C. 1901 *et seq.*), the Administration carries out programs and studies aimed at reducing economic losses in motor vehicle crashes and repairs through general motor vehicle programs; administers the Federal odometer law; issues theft prevention standards; and promulgates average fuel economy standards for passenger and non-passenger motor vehicles.

#### **NHTSA Mission and Objectives**

The NHTSA's mission is to reduce the number of deaths, injuries, and economic losses resulting from motor vehicle crashes on the nation's highways and to provide motor vehicle damage susceptibility and ease of repair information, motor vehicle inspection demonstrations, and protection of purchasers of motor vehicles, and average standards of mileage per gallon of fuel.(39)

Under U.S. Code, the Administrator of the NHTSA is responsible for the accomplishment of other objectives under the National Traffic Motor Vehicle Safety Act of 1966.(40) These include: highway safety programs, highway safety research and

development, school bus driving training, project grants, alcohol related traffic and safety programs, and alcohol-impaired driving countermeasures.(41)

This agency sets the highway safety standards, and then it directs other agencies and states to follow these. Section 401 of Title 23 reveals, "The Secretary is authorized and directed to assist and cooperate with other Federal departments and agencies, State and local governments, private industry, and other interested parties to increase highway safety."(42) NHTSA's main function is research, statistics, planning, and safety programs with enforcement dealing mainly with defects investigation and non-commercial vehicle safety compliance.

### **NHTSA Impact on Transboundary Movement**

Of these two DOT Administrations, FHWA has a more critical impact on cross-border movement. Of the three targets of interest, cargo, equipment, and drivers, FHWA has interest in all three. It has jurisdiction over five aspects of these interest targets: safety matters with respect to equipment, placarding of hazardous cargo, minimum insurance requirements, operating authorities, and driver qualifications and status. Thus, a commercial crossing may be stopped by DOT for inspection of all five aspects of the transboundary movement.

### **Potential Overlap**

After analyzing FHWA's and NHTSA's organizational structure, one can clearly see that there is already a potential overlap between the two agencies. Both agencies, have research offices, policy offices and planning offices. Both are mandated to improve highway safety, but they focus on different issues. FHWA regulates motor carriers, and NHTSA regulates other vehicles. As such, the NHTSA has very little to do with transborder movement.

In the case of FHWA, both U.S. inspectors and the state Department of Public Safety enforce FHWA regulations. Additionally, like Customs, DOT is interested in the cargo because of insurance requirements, especially for hazardous materials. As with INS and the Border Patrol, it is also interested in the driver, his or her fitness, and authority to drive, and



eventually, DOT will be interested in whether the driver has the appropriate documentation to drive in the territory of the United States. Therefore, inspections conducted by the administrations of the Department of Transportation are in addition to those conducted by the U.S. Customs service and state and local agencies with concurrent jurisdiction over motor carrier safety.

## **UNITED STATES DRUG ENFORCEMENT ADMINISTRATION**

The Drug Enforcement Administration (DEA) is the lead Federal agency in enforcing narcotics and controlled substances' laws and regulations. It is an agency in the Department of Justice. The President, with the advice and consent of the Senate, appoints the administrator of the agency. The DEA administrator answers directly to the Attorney General.(43)

The DEA concentrates its efforts on high-level narcotics smuggling and distribution organizations in the U.S. and abroad, working closely with such agencies as the Customs Service, the Internal Revenue Service, the Federal Bureau of Investigation, and the Coast Guard.

### **Legal Basis**

The DEA is a relatively new agency. It was created in July 1973 by the Reorganization Plan No. 2 of 1973 (5 USC appendix), which was introduced by President Richard Nixon. Section 4 of this Plan simply stated: "There is established in the Department of Justice an agency which shall be known as the Drug Enforcement Agency." Section 5 states that there shall be at the head of this agency an Administrator and that he "shall perform such functions as the Attorney General shall from time to time direct."(44)

## **DEA Mission and Objectives**

The prime directive of the DEA is to provide the best drug law enforcement possible to the American people. The agency is charged with disrupting and apprehending major domestic and international drug criminals, while addressing the growing problem of drugs and violence in communities across the United States. (45)

Title 21 of US Code, Sec. 871 provides the power that the Attorney General has to delegate his functions. Subsection (a) states: "The Attorney General may delegate any of his functions under this subchapter to any officer or employee of the Department of Justice." (46)

The reorganization plan transferred functions to the Attorney General, and the Attorney General in turn, transferred these to the Administrator of the DEA.

DEA's responsibilities include:

1. Development of overall Federal drug law enforcement strategy, programs, planning, and evaluation;
2. Full investigation and preparation for prosecution of suspects for violations under all Federal drug trafficking laws;
3. Full investigation and preparation for prosecution of suspects connected with illicit drugs seized at U.S. ports of entry and international borders;
4. Management of a national narcotics intelligence system;
5. Regulation of the legal manufacture of drugs and other controlled substances under Federal regulations;
6. Enforcement of the Controlled Substances and Chemical Diversion and Trafficking Acts as they pertain to the manufacture, distribution, and dispensing of legally produced controlled substances;
7. Seizure and forfeiture of organizational profit and operating capital derived from, traceable to, or intended to be used for drug trafficking;

8. Coordination with Federal, State, and local law enforcement authorities and cooperation with counterpart agencies abroad; and
9. Training, scientific research, and information exchange in support of drug traffic prevention and control.(47)

To accomplish these objectives, DEA has broad enforcement powers. Title 21, Section 878, states that any officer or employee of the Drug Enforcement Administration or local law enforcement officer designated by the Attorney General may:

1. Carry firearms;
2. Execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses issued under the authority of the United States;
3. Make arrests without warrant (A) for any offense against the United States committed in his presence, or (B) for any felony, cognizable under the laws of the United States, if he has probable cause to believe that the person to be arrested has committed or is committing a felony;
4. Make seizures of property pursuant to the provisions of this subchapter; and
5. Perform such other law enforcement duties as the Attorney General may designate.(48)

## **Organizational Structure**

"The reorganization plan transferred from the Secretary of the Treasury, the Department of the Treasury, and any other officer or any agency of the Department of the Treasury, to the Attorney General all intelligence, investigative, and law enforcement functions, vested by law in the Secretary, the Department, officers, or agencies which relate to the suppression of illicit traffic in narcotics, dangerous drugs, or marijuana, except that the Secretary shall retain, and continue to perform, those functions, to the extent that they relate to searches and seizures of illicit narcotics. . . or to the detention or apprehension of persons in

connection therewith, at regular inspection locations at ports of entry or anywhere along the land or water borders of the United States."(49)

The DEA is a part of the Department of Justice. DEA's administrator answers directly to the Attorney General. Under the Administrator, there is the deputy administrator. Together they oversee the functions of its six offices and four divisions. The offices include: Board of Professional Conduct, Office of Congressional & Public Affairs, Office of Training, Office of Chief Counsel, Office of Financial Management, and Administrative Law Judges. The four divisions are headed by assistant administrators and include: Planning and Inspection Division, Operations Division, Intelligence Division, and Operational Support Division.

### **Impact on Transboundary Movement**

Given DEA's primary mission to thwart illegal drugs, much of its activity involves foreign criminal intelligence and the relationship of drug smuggling to the transportation industry. Therefore, DEA is concerned with any method of transboundary movement which may be used to bring illegal drugs into the United States. These methods may involve motor carrier firms, the equipment itself, the driver or operator, and the cargo. Thus, DEA is in the position to interdict movement alone or along with other law enforcement agencies with appropriate jurisdiction.

### **Potential Overlap**

Although, the Reorganization Act, which created DEA, was an attempt to reduce the overlap that existed among federal agencies, some argue that it still has not clearly removed the overlap, especially in the gathering of criminal intelligence and the conduct of some investigative activities. Officially, this Act specifically left the inspections at borders to Customs and the investigations to DEA; however, U.S. Customs is actively investigating drug cases and is protective of their information with respect to these ongoing investigations. Nonetheless, although the Customs Service has its own investigative branch, major or

specifically requested cases are transferred to DEA. Therefore, there still exists an overlap between Customs and DEA. An interview of DEA's resident agent-in-charge in Laredo, Michael Dromgoole, revealed there is also an agreement between the DEA and Border Patrol regarding drug-related cases. Border Patrol transfers all drug related cases to DEA. In fact, Border Patrol is serving DEA as its police or inspectors since DEA does not have regular checkpoints or fixed inspectors. Finally, as previously mentioned, DEA works closely with the FBI and Coast Guard. Clearly, potential exists for much overlapping.

## **UNITED STATES DEPARTMENT OF THE INTERIOR**

The United States Department of Interior (DOI) is the Nation's principal natural resource conservation agency. Its main concern is the interests of U.S. citizens, any U.S. island territory, and, most importantly, reservation communities of American Indians. DOI administers millions of acres of Federal land and Indian lands and manages the conservation and expansion of mineral water resources, irrigation systems, and hydroelectric power systems. It preserves scenic and historic areas of the Nation. DOI provides protection for society, the environment and fish and wildlife resources.

### **Legal Justification**

The Department of Interior was created by the act of March 3, 1849 under (43 U.S.C.1451), which extended to the General Land Office, Office of Indian Affairs, Pension Office, and the Patent Office.

#### **SECTION 1451.**

There shall be at the seat of government an executive department to be known as the Department of the Interior, and a Secretary of the Interior, who shall be head thereof.

#### **SECTION 1. TRANSFER OF FUNCTIONS TO THE SECRETARY**

(a) Except as otherwise provided in subsection (b) of this section, there are hereby transferred to the Secretary of the Interior all functions of all other officers of the Department of the Interior and all functions of all agencies and employees of such



Department.

(b) This section shall not apply to the function vested by the Administrative Procedure Act (60 Stat.237) in hearing examiners employed by the Department of the Interior, nor to the functions of the Virgin Islands Corporation or of its Board of Directors or officers.

## **DOI's Mission**

The Department of Interior's mission includes "fostering sound use of our land and water resources; assessing and protecting our fish, wildlife, and biological diversity; preserving the environmental and cultural values of U.S. national parks and historic places; and providing for the enjoyment of life through outdoor recreation".

## **Organizational Structure**

The organizational structure for DOI at this time includes the Secretary at the top level, then five Assistant Secretaries, each of whom manages a particular department and reports directly to the Secretary. These departments include Fish and Wildlife and Parks, Indian Affairs, Land and Minerals Management, Territorial and International Affairs, and Water and Sciences.

### *Fish and Wildlife Services*

#### **Legal Basis**

Due to the fact, that DOI is involved with protecting the fish and wildlife resources, an agency was established for the protection of endangered species, migratory birds, inland sport fisheries, and certain marine mammals. This agency is the United States Fish and Wildlife Service (FWS), established in 1940 by the Reorganization Plan III (5 U.S.C., appendix) and later affirmed in 1974.

### **Mission and Objectives**

Fish and Wildlife Service is responsible for the protection of habitat preservation, for example, land and waters, which are directly used by wildlife. These activities include surveillance of pesticides, heavy metals, and other contaminants; studies of fish and wildlife populations; ecological studies; and environmental impact assessments and environmental impact statement reviews.

FWS is further responsible at the point of importation or exportation for duties set forth in the Wild Bird Conservation Act (WBCA), which became effective on October 23, 1992. Specifically, this Act deals with protection of exotic birds subject to trade which are listed in an appendix to the Convention on International Trade in Endangered Species (CITES). Thus, while FWS has a minor role at the border in insuring compliance with federal law relating to the importation of birds and endangered species, it has the power to stop, inspect, and arrest if necessary.

### **Impact on Transboundary Movement**

The Department of Interior's direct impact on border crossings is minimal. In most cases, they are responsive to the U.S. Customs Service, who usually discover evidence of DOI/FWS violations. Nonetheless, they do have criminal jurisdiction, which allows them an active and direct role.

### **Potential Overlap**

DOI/FWS works in conjunction with United States Department of Agriculture's (USDA) Veterinary Services (VS). Although the USDA, as will be seen later, is responsible for sanitary and phytosanitary standards of imported plants and wildlife, both agencies may be involved with the interception of certain animals. If, at the time of import of wildlife, requisite permits have not been obtained or requirements set forth by certain components of the USDA have not been met, FWS has first priority and jurisdiction. If, however, the wildlife is not under the jurisdiction of DOI, USDA may take responsibility to ensure that the wildlife has

all the required paperwork in order and the bird is inspected to be free of any diseases. All these activities must be measured against Customs Service's role with respect to the legal entry and taxation, if any, of the imported wildlife.

## **UNITED STATES DEPARTMENT OF AGRICULTURE**

### **Legal Justification**

The Department of Agriculture was created by an act of May 15, 1862, as the "People's Department" (7 U.S.C. Sec. 2201).

There shall be at the seat of government a Department of Agriculture, the general design and duties of which shall be to acquire and to diffuse among the people of the United States useful information on subjects connected with agriculture, rural development, aquaculture, and human nutrition, in the most general and comprehensive sense of those terms, and to procure, propagate, and distribute among the people new and valuable seeds and plants.(50)

During 1953, the delegation of functions was transferred from the Department of Agriculture to the Secretary under Reorganization Plan No. 2 (5 U.S.C. App.) for the purpose of improving and simplifying the internal organization of the Department of Agriculture.

### **Mission and Objectives**

The United States Department of Agriculture mission includes:

1. Help American farmers and ranchers earn a good living,
2. Help bring running water to the homes of rural Americans,
3. Manage our national forests,
4. Protect our soil and water,
5. Keep foreign plant and animal diseases out of our country,
6. Increase agricultural exports,

7. Feed hungry people and provide nutritious meals for 25 million school children each day,
8. Conduct research to improve agricultural practices and human nutrition, and
9. Improve food safety.(51)

The United States Department of Agriculture's general objectives rest mostly with issues such as improving and maintaining farm products and working towards the development and expansion of U.S. agriculture into foreign markets. It provides national growth policies to be carried out by programs, such as rural development, credit, and conservation. USDA safeguards daily food supply through education and government programs, while it also supplies food to needy countries. However, its role at the border is to guarantee that imported plants and livestock do not carry microorganisms which would endanger the U.S. food supply or the safety and health of the general public.

### **Organizational Structure**

The organizational structure for USDA includes the Secretary and five main staff functions which include: Chief Financial Officer, General Counsel, Inspector General, Executive Operations, and the Director of Communications who assist in administering nine different agencies and programs. Its structure is composed of departments: Natural Resources and the Environment; Farm and Foreign Agricultural Services; Rural Economic and Community Development; Food, Nutrition and Consumer Services; Food Safety; Research, Education, and Economics; and Marketing and Regulatory Programs.(52)

#### ***Animal and Plant Health Inspections Service***

##### **Legal Basis**

The Department of Marketing and Regulatory Programs is the department which deals with the international movement of cargo in insuring that the imported foodstuffs comply with U.S. standards (5 U.S.C. 2201). In order to carry out this responsibility, the Secretary of

Agriculture established on March 14, 1977, the Animal and Plant Health Inspections Service (APHIS) under Reorganization Plan No. 2 of 1953 and 5 U.S.C. 301.

### **Mission and Objectives**

APHIS was established to:

conduct regulatory and control programs to improve animal and plant health for the benefit of man and the environment. In cooperation with State governments, the agency administers Federal laws and regulations pertaining to animal health and quarantine, humane treatment of animals, and the control and eradication of pests and diseases. Regulations to prevent the introduction or spread of certain animal or plant pests or diseases are also enforced by the Service. It also carries out research and operational activities to reduce crop and livestock depredations caused by birds, rodents, and predators.(53)

### **Organizational Structure**

APHIS is comprised of the following 10 programs:

- Plant and Protection and Quarantine (PPQ),
- Veterinary Services (VS),
- Animal Damage Control (ADC),
- International Services (IS),
- Biotechnology, Biologics and Environmental Protection (BBEP),
- Regulatory Enforcement and Animal Care (REAC),
- Policy and Program Development (PPD),
- Legislative and Public Affairs (LPA),
- Recruitment and Development (R&D), and
- Management and Budget (M&B).

### ***Plant Protection and Quarantine***

#### **Legal Basis**

PPQ receives its authority from the Federal Plant Pest Act (7 USC 150dd, 150ff), the Plant Quarantine Act (7 USC 164a), the Federal Noxious Weed Act of 1974 (7 USC 2806), and animal quarantine laws (7 USC 1622, 1624; 19 USC 1306, and 21 USC 111, 134a, 134d).



### **Plant Protection and Quarantine Mission, and Objectives**

PPQ inspectors, located at international airport terminals, seaports, and border stations, check passengers and baggage for products that could harbor pests or diseases. PPQ also checks ship cargoes, rail and truck freight and mail from foreign countries; certifies U.S. agricultural products for export; and helps combat plant pests within the United States.

Their authority includes the right

. . . to stop and without warrant, inspect persons, receptacles, and any means of conveyance moving into the United States or in interstate commerce, and to seize and dispose of any plant pests, plants, animals and animal products, and other articles carried thereby, upon probable cause to believe that they are infested by or carry any plant pest or animal disease, that their movement is regulated under such laws and under conditions specified in said laws.(54)

In addition to PPQ, Veterinary Services (VS) have authority to interdict movement across international borders of the United States. Under the same authority as PPQ, VS is charged with ensuring that animals entering the United States comply with U.S. sanitary standards. VS even makes use of inspectors on horseback called "Tick Riders," who patrol a permanent geographical zone called a "buffer zone" set up in 1941 by the U.S. government as a barrier against strays from Mexico that might be carrying ticks. This zone extends 500 miles from Amistad Dam near Del Rio, Texas to the Gulf of Mexico.

### **Impact on Transboundary Movement**

USDA has a very clear and direct impact on border crossings. Their inspectors are visibly present and inspect all fresh fruits, vegetables, livestock, meat and poultry to ensure that they meet phytosanitary and sanitary standards of the United States.

### **Potential Overlap**

USDA works in conjunction with the Department of Interior, and the U.S. Customs Service, which initially informs USDA or DOI of international cargo within their jurisdictions. The importation of particular birds, therefore, could cause all three agencies to control their movement through the border into the United States.

## **UNITED STATES FOOD AND DRUG ADMINISTRATION**

### **Legal Basis**

The current statutory basis for the U. S. Food and Drug Administration is found in the Federal Food, Drug, and Cosmetic Act, as amended, July 1993.

### **Mission and Objectives**

The American people expect and rely on a safe and wholesome food supply, and access to safe and effective drugs and medical devices. To meet those expectations, FDA inspects and oversees almost 95,000 establishments that produce:

- \$487 billion worth of food,
- \$107 billion worth of drugs—prescription and over-the-counter—and biologics,
- \$350 billion worth of medical devices and radiation-emitting products,
- \$3 billion worth of animal drugs and medicated feed, and
- \$39 billion worth of cosmetics and toiletries.

In addition to overseeing the production of safe foods and the manufacture of safe and effective drugs and medical devices, FDA has responsibility for:

- Protecting the rights and safety of patients in the clinical trials of investigational medical products;
- Reviewing and approving in a timely manner the safety and efficacy of new drugs, biologics, medical devices, and animal drugs; and
- Monitoring the safety and effectiveness of new medical products after they are marketed and acting on the information collected.

As the nation's oldest consumer protection agency, FDA is also responsible for seeing that the public has access to truthful and non-misleading product information by:

- Monitoring the promotional activities of drug and device manufacturers; and
- Regulating the labeling of all packaged foods.

FDA's public health mission also encompasses efforts to assure:

- The safety of the nation's blood supply; and
- The safety of all imported FDA-regulated products.(55)

The objectives of the Food and Drug Administration (FDA) are in a general sense to safeguard consumers' health and safety interests as well as to protect the consumer against fraud. These laws govern the commerce of both domestic and imported products. All food, drugs, biologics, cosmetics, medical devices, and electronic products that emit radiation, as defined in the FDC and related acts, are subject to examination by FDA when these goods are being imported or offered for import into the United States.(56) By law, all imported products are required to meet the same standards as their domestic counterparts. Imported foods must be pure, wholesome, safe to eat, and produced under sanitary conditions; drugs and devices must be safe and effective; cosmetics must be safe and made from approved ingredients; radiation-emitting devices must meet established standards; and all products must contain informative and truthful labeling in English.(57) With regards to food, drugs, devices, and cosmetics, the term "adulteration," as defined in the FDC Act, deals with the content of a product (such as the addition of a substance which makes a product inferior, impure, not genuine, etc.), while misbranding includes statements on labels or labeling that are false or misleading.(58)

### **Organizational Structure**

The Commissioner directs the Federal Food and Drug Administration with four offices directed by deputy commissioners: the Office of Operations, the Office of Policy, the Office of Management and Systems, and the Office of External Affairs.

The FDA maintains district offices and resident posts, which provide the operational structure for activities at each of the approximately 500 U.S. Customs Service points of entry in the country, including major airports. On a normal workday, about 200 to 300 FDA

inspectors, laboratory analysts, and compliance officers handle imports at Customs ports.

### **Impact on Transboundary Movement**

The FDA has a direct influence on cross-border movements, which depends upon its working relationship with Customs. As in most cases, FDA must rely upon Customs' cooperation and notification in order for inspection and enforcement procedures to function smoothly. Upon notification by customs, FDA decides whether to examine the entry. If FDA decides not to examine an entry, the product will be allowed to proceed into the United States. If it is deemed necessary to sample an entry, generally an FDA representative will collect the sample from the shipment and have it analyzed in FDA's laboratory.<sup>(59)</sup> The shipment is released into United States commerce if the analysis shows the product to be in compliance. It is denied admission, however, if any violation is discovered.

### **Potential Overlap**

The Act specifies the distinction of duties between the Secretary of Treasury and the Secretary of Health and Human Services, which helps to alleviate overlaps in jurisdictions and enforcement.

The Secretary of the Treasury shall deliver to the Secretary of Health and Human Services, upon his request, samples of food, drugs, devices, and cosmetics which are being imported or offered for import into the United States. . . the Secretary of Health and Human Services shall furnish to the Secretary of the Treasury a list of establishments registered pursuant to subsection (I) of section 510 and shall request that if any drugs or devices manufactured, prepared, propagated, compounded, or processed in an establishment not so registered are imported or offered for import into the United States, samples of such drugs or devices be delivered to the Secretary of Health and Human Services, with notice of such delivery to the owner or consignee. . . If it appears from the examination of such samples or otherwise that (1) such article has been manufactured, processed, or packed under insanitary conditions or, in the case of a device, the methods used in, or the facilities or controls used for, the manufacture, packing, storage, or installation of the device do not conform to the requirements of section 520(f), or (2) such article is forbidden or restricted in sale in the country in which it was produced or from which it was exported, or (3) such article is adulterated,



misbranded, or in violation of section 505, then such article shall be refused admission, except as provided in subsection (b) of this section. The Secretary of the Treasury shall cause the destruction of any such article refused admission unless such article is exported, under regulations prescribed by the Secretary of the Treasury, within ninety days of the dated of notice of such refusal or within such additional time as may be permitted pursuant to such regulations. . . (60)

State regulatory agencies also cooperate with FDA on import surveillance. The Association of Food and Drug Officials, comprised of federal and state officials, has established a committee to explore ways in which these two levels of government can cooperate in an effort to increase their effectiveness in regulating imports. State inspectors examine certain products once they are in the U.S. market and share data they collect with other state officials and federal regulators. FDA relies on assistance from other state and federal officials because of increased volume and the changing nature of the products imported into the U.S.

## **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

### **Legal Basis**

The branch of the United States government that implements and effectively enforces the Federal environmental laws is the Environmental Protection Agency (EPA). The EPA is granted its power to enforce the environmental issues as defined in the Resource Conservation and Recovery Act (RCRA), including the transportation of hazardous materials. The Act also allows States to enforce U.S. environmental laws at the pleasure of the EPA.

They may use a variety of tools to force violators into compliance with the appropriate rules and with EPA regulations. Included within the regulated community are transporters, brokers, treatment, storage, and disposal facilities (TSDs), U.S. sister plants and some other intermediaries.(61)

The RCRA clearly defines the EPA's powers in the Federal Enforcement section through the Administrative Orders. The RCRA states:



"The EPA is authorized under RCRA to issue administrative orders for violations of its (RCRA) requirements. The administrative orders serve to inform the violator of the violation, the recommended solution and a time frame for implementing the solution. Administrative orders may also be used to assess penalties as punitive actions without going to court. Most enforcement actions are administrative and usually precede any other civil enforcement actions. However, a civil action may be initiated first if a violation is severe. If an administrative order does not bring about a satisfactory conclusion, the EPA may refer the case to the Department of Justice, who on behalf of the EPA, may initiate a civil action suit against the violator in the appropriate Federal District Court. Violators may be fined up to \$25,000 per day per violation."(62)

In addition to the civil enforcement actions, the EPA is granted the authority to bring criminal action for a variety of violations of the RCRA. A violator may be imprisoned for up to two years and/or fined \$50,000 per day of violation.(63)

### **Mission and Objectives**

The Mission Statement of the Environmental Protection Agency is as follows:

The people who work at the U.S. Environmental Protection Agency are dedicated to improving and preserving the quality of the environment, both national and global. We work to protect human health and the productivity of natural resources on which all human activity depends. Highly skilled and culturally diverse, we are committed to using quality management processes that encourage teamwork and promote innovative solutions to environmental problems. In particular we are committed to ensuring that:

- Federal environmental laws are implemented and enforced effectively.
- U.S. policy, both foreign and domestic, fosters the integration of economic development and environmental protection so that economic growth can be sustained over the long term.
- Public and private decisions affecting energy, transportation, agriculture, industry, international trade, and natural resources fully integrate considerations of environmental quality.
- National efforts to reduce environmental risk are based on the best available scientific information communicated clearly to the public.
- Everyone in our society recognizes the value of preventing pollution before it is created.
- People have the information and incentives they need to make environmentally responsible choices in their daily lives.
- Schools and community institutions promote environmental stewardship as a national ethic.(64)

## **Organizational Structure**

The EPA's organizational structure is composed of the Administrator, Deputy Administrator and eleven Assistant Administrators covering: resource management, air and radiation, enforcement, international activities, policy and planning, pesticides and toxic substances, research and development, solid waste and emergency response, water, and the Inspector General and General Counsel. There are 10 EPA region offices within the United States. Division 6 is located in Dallas, Texas and is the division responsible for the Texas-Mexico border.

## **Impact on Transboundary Movement**

Unlike some other agencies that have offices directly on the border, EPA covers the Texas border out of Region 6, headquartered in Dallas. Given that EPA utilizes the state to enforce EPA mandates, this federal agency does not have visibility at the border. Most of the operations affecting transborder movement involve the crossing of hazardous waste, and they are conducted by the Texas Natural Resource Conservation Commission (TNRCC).

## **Potential Overlap**

In most cases, the EPA does not work alone. The Agency has close contact with the TNRCC, DOT and U.S. Customs Service in regulating the import, treatment, transport, storage, and disposal of hazardous waste. The EPA and the DOT have worked together to develop standards for transporters of hazardous waste in order to avoid conflicting requirements. In the case of U.S. Customs and the EPA, section 3017 of RCRA provides that the EPA "should work with the U.S. Customs Service to establish an effective program to monitor and spot-check international shipments of hazardous waste to assure compliance with hazardous waste export requirements." (65)

Except for transporters of hazardous waste by water, a transporter who meets all applicable DOT requirements of 49 CFR parts 171 through 179 and the EPA requirements of 40 CFR 263.11 and 263.31 will be deemed in compliance. Regardless of the DOT's action, the EPA retains its authority to enforce these regulations.(65) In addition, since both the EPA and the DOT have promulgated regulations concerning the transportation of hazardous waste, hazardous waste transporters must comply with both RCRA and the Hazardous Materials Transportation Act (HMTA). However, since section 3003 of RCRA specifically requires that the EPA promulgate hazardous waste transportation regulations consistent with those promulgated under HMTA, a substantial portion of the EPA's transporter standards correspond to the DOT's hazardous materials transportation regulations.(66) Additionally, given that certain U.S. border States have been authorized to regulate certain hazardous materials handling, State agencies such as the Texas Natural Resource Conservation Commission (TNRCC) also have jurisdiction as to compliance matters.

Through a 1986 Memorandum of Understanding, U.S. Customs and the EPA have been assigned joint responsibilities in the enforcement of RCRA. U.S. Customs has been assigned the duties of collecting all of the manifests from transporters of hazardous waste and holding them on file for the EPA to record and analyze for discrepancies, and inspecting, seizing, detaining or otherwise handling non-complying shipments. Collectively, the EPA and U.S. Customs are developing a joint enforcement strategy, which includes participating in a pilot spot-checking program and coordinating an enforcement response effort, encompassing the exchange of information with other agencies such as the Department of Commerce, the Bureau of Census, and the state agencies in the border area.(67)

## **SELECTED OTHER BORDER ACTIVITIES**

This section of the inventory portion of the study focuses upon some of those "players" at the border who are not members of specific federal or state governmental agencies, yet have a significant role in selected transboundary activities. Importantly, this includes binational entities, local and regional agencies (both governmental and private), and private sector enterprises.

Unlike the discussions of the federal and state agencies, which were fairly sequential and exhaustive in the coverage of the principal border related activities, the content of this section presents several relevant activities at various border locations and is not meant to be a complete inventory of salient players up and down the entire 1980 km border. Such an inventory would far exceed the scope of this study and the resources dedicated to this (non-federal/state) portion of the work.

The information developed for this section focuses upon: binational transportation planning and technology; regional transportation planning activities for selected border MPOs; private sector investment in transportation infrastructure; and selected other entities involved in transportation activities on the Texas/Mexico border.

### **INTERNATIONAL TRANSPORTATION TECHNOLOGY INITIATIVE: THE NORTH AMERICAN TRADE AUTOMATION PROTOTYPE (NATAP)**

In the two volumes of NAFTA's text, perhaps the most important provision affecting the movement of goods among the countries of North America, is the little known Article entitled Cooperation, Article 512. To date, there has been more progress by more public and private entities under Article 512 in removing barriers to trade flows than by any other mechanism set up in NAFTA.

In addition to Article 512, and as a result of the U.S. National Performance Review, a memorandum dated September 15, 1995, from Vice President Gore recommended the establishment and implementation of the International Trade Data System (ITDS). This system

would be used to collect and manage data in furtherance of the United States government's responsibilities for trade analysis, trade policy development, and trade promotion. Thus, as a result of the combination of Article 512 and ITDS and in cooperation with Canada and Mexico, three nations decided to establish a demonstration project to show how the flow of goods among the party nations to NAFTA could be automated. This demonstration project, called the **North American Trade Automation Prototype (NATAP)**, is an electronic commerce initiative intended to streamline the border clearance of commercial goods ultimately resulting in a seamless border.

### **Intelligent Transportation Systems (ITS) Outcome**

The prototype is intended to automate the movement of cargo from one country to another. The shipper and carrier provide certain mandatory data to the appropriate Customs Administrations through the Internet, and in conjunction with a special electronic system which utilizes electronic readers, the electronic data are then utilized to speed up the clearance of the goods. For instance, through a dedicated electronic network, an export reader in a motor carrier's truck alerts the country of export and the country of import of an impending shipment of cargo out of one NAFTA country into another NAFTA country. Once the Customs Administrations electronically "ok" the shipment via the Internet, a decision reader informs (through an audible and red-light, green-light system) the driver in the carrier's truck of the status of the shipment and whether to proceed. After being permitted to proceed, the electronic reader turns off the authorizing green light.

As the shipment nears the country of import, the reader identifies the truck to the import system, which responds to the driver in the cab of the truck through an audible and red-light, green-light system. If the shipment is cleared without examination, the driver is notified in the cab and proceeds in an expedited fashion, in some cases through dedicated lanes into the country of import without the requirement of stopping. If an in-cab red light appears, the driver is thus notified that his or her shipment has been selected for examination by the importing country's enforcement system.



In effect, the prototype facilitates the movement of the goods through North America in an expedited fashion, creating a seamless, automated system, easily monitored, and recorded for statistical purposes by all the nations involved.

### **ITS Design**

NATAP is based on a vision of common data elements, documents and processes for commercial customs clearance. The prototype is a test of concepts, operating in parallel to current systems, which will allow us to experiment with new processes incorporating leading edge technologies, such as the use of Electronic Data Interchange and Intelligent Transportation Systems, to speed the flow of trade. In effect, the goal of the prototype is to permit the three Customs Administrations to step beyond the constraints of current cross-border operations by utilizing new technologies that permit the pre-clearance of goods from origin in one party nation to destination in another.

The prototype thus demonstrates a coordinated, government-wide system for the collection, use, and dissemination of information related to commerce across national boundaries. The information consists of standardized data from shippers, carriers, and brokers, on cargoes and crews collected only once and retrievable by the three governments. Certain non-proprietary information is also available to non-government users as necessary for fulfilling the importation and exportation requirements needed to facilitate a non-stop movement of goods through the national borders of the NAFTA nations.

### **ITS Benefits**

NATAP's primary benefits are cost reductions and improved efficiencies, which speeds the movement of international cargo. Significant cost reductions will be realized through improved processing and transmission activities by:

1. Standardizing data elements and EDI messages;
2. Eliminating redundant information;
3. Reducing the number of required transmissions by providing access to information captured in central locations; and
4. Reducing the paper burden.

Efficiencies are realized by:

1. Eliminating clearance delays through expediting the release of commercial goods;
2. Reducing congestion at border crossings through pre-arrival processing which leads to a "seamless" border for highway and rail traffic; and
3. Improving the timeliness of communication among the Customs authorities and trading partners as to the status of the cargo and the clearing process.

Although NATAP as a prototype is ultimately destined for termination, it still accommodates the future. By providing for a more accurate electronic exchange of information between traders, carriers, brokers and Customs during its existence, it constitutes the medium for future efficiencies. After the completion of the prototype demonstration, consignors, consignees, carriers, and brokers will be able to continue the electronic commerce process among themselves to reap the benefits of the improved speed, accuracy and resultant efficiencies developed by the prototype and its operation.

There are some other indirect but substantial benefits to the traders who participate in NATAP. These include a potential for quicker billing and faster turnaround of client payments, reductions in long term warehousing and space cost requirements, and reductions in fuel and maintenance costs.

Although difficult to assess fully at this time, it is expected that there will be positive revenue adjustments resulting from new efficiencies for federal, state, and local governments. The economic health of the private sector companies involved in international trade may also be improved.

The prototype test and its performances will also have an effect on the implementation progress and accomplishments of NAFTA with respect to its harmonization objectives and cooperative provisions. Furthermore, the prototype may affect potential entrants to NAFTA,

such as Chile and other Central or South American nations. If successful, NATAP may further affect the relationship of NAFTA to the European Community and the commercial movement of goods within the EC and between the EC and North America by serving as a model of efficiency in the movement of goods across national borders. Finally, the result of a successful prototype will have international financial implications and policy implications on not only future trade agreements but also implications for the World Trade Organization (WTO).

### **EDI Components of NATAP**

To cross cargo into another country, the Customs administrations of both the exporting and importing countries need information. Until NATAP most of the information was captured on paper documents, which varied greatly from country-to-country with respect to the type and amount of data needed. NATAP still functions on the basis of data required by the Customs Administrations of the United States, Canada, and Mexico. However, instead of using a multitude of different paper documents, the data ordinarily contained in these documents have been harmonized and reduced to a single international EDI (Electronic Data Interchange) format for use on the Internet. Prototype participants will transmit data using the UN/EDIFACT (Electronic Data Interchange for Administration, Commerce, and Transport) standard and the Internet. Network and message encryption will be employed for message authentication, data confidentiality and integrity and non-repudiation. Canada Customs has developed a trade software package that incorporates all the features of the prototype, including generation and translation of the UN/EDIFACT messages, encryption, and communication.

The prototype uses three UN/EDIFACT messages: CUSDEC, CUSCAR and CUSRES. The CUSDEC message transmits declaration data (import, export, and in transit). The CUSCAR message transmits bill of lading and manifest data. And the Customs Administrations use the CUSRES message to respond to trading party. Each message has mandatory and conditional data elements. The CUSDEC, CUSCAR, and CUSRES messages

are unique for each import, export, and in transit transaction.

### 1. Customs Declaration (CUSDEC) Message

The CUSDEC message is the primary responsibility of the shipper (exporter) or receiver (importer). It constitutes the essential release message required for the goods to either enter or exit a party nation. All three countries require the same 18 mandatory data elements for an import shipment message; Mexico requires one more, the seal number. All three nations agreed that 17 mandatory data elements are required for the export CUSDEC. Typical of each CUSDEC message would be data elements such as the tariff number, shipper domestic and international transaction number, and invoice data. Each country, however, may require a special data element for its own use.

### 2. Customs Core Transportation (CUSCAR) Message

The CUSCAR message is the primary responsibility of the carrier and is taken primarily from the bill of lading and manifest data. The import CUSCAR has 9 mandatory data elements, while the export CUSCAR has 5 mandatory data elements. The export message is made up of:

1. Driver identification,
2. Carrier trip number,
3. Hazardous material indicator,
4. Container/Van/Railcar identification number, and
5. Carrier code.

The import CUSCAR contains the basic five elements of the export message with the addition of 4 more data elements. As in the CUSDEC message, each country retains the right to add unique requirements to the message. For instance, Mexico requires the Seal Number to be included in both the export and import CUSCAR messages.

### 3. Customs Response (CUSRES) Message

The CUSRES message is merely the response message from the appropriate Customs Administration to transmit processing information back to the trading partners advising them of the status of the shipment.

The costs of these messages are small. Given the use of the Internet, the cost to users would be approximately \$15.00(USD) per month or less depending upon the service provider.

### **Equipment Requirements**

At the present time, participants in NATAP will need IBM-compatible PCs. Each should have 16 Mb of RAM and a 1 Gb hard drive. The IBM compatible PC should have either Windows 95 or Windows NT installed. Given full applications of Windows 95 or Windows NT, a Pentium PC would be more advisable. These are adequate to manipulate the data embedded in the EDI messages. Modems of moderate speed (at least 14.4 Kbs) will also be necessary. Radio frequency devices (Vehicle-to-Roadside VRC, type-3 transponders) will be used in the trucks involved. Type-3 transponders are estimated to cost between \$40 to \$100 each.

### **Planned Site Locations and Participants**

In the United States, test sites have been selected for implementation of the prototype. On the northern border, the cities of Detroit, Michigan; Windsor, Canada; Buffalo, New York; and Fort Erie, Canada, were chosen. On the southern border, these sites have been selected: Laredo, Texas; Nuevo Laredo, Mexico; Nogales, Arizona; Nogales, Mexico; Otay Mesa, California; and Tijuana, Mexico.

Implementation of the NATAP began September 1996. Participants include: exporters, importers, brokers, forwarders, and carriers. Initial products and commodities selected for the prototype were:

1. Automotive,
2. Beer and Liquor,
3. Electronics,
4. Fresh Fruits and Vegetables,
5. Lumber,



6. Newsprint,
7. Steel, and
8. Textiles and Wearing Apparel.

However, the Prototype is not limited to just these commodities. Applications are being accepted from exporters of other products.

NATAP streamlines and standardizes electronically the process of moving international goods among the NAFTA nations. Single transactions accomplished at the origin of the shipment using common data elements eliminates the necessity of stopping at border locations for Customs purposes prior to crossing cargo, equipment, and crews. As a demonstration project, NATAP, in effect, promotes and directs movement through, not to, the border, generating efficiencies and sophistication not currently existing, especially on the U.S.-Mexican border.

#### **BORDER ITS PLANNING STUDY(68)**

A border ITS plan is the purpose of on-going research being conducted at the Intelligent Transportation Systems Research Center of Excellence located at Texas A&M University. The study staff and its Border Transportation Advisory Panel are developing a comprehensive plan for the use of innovative technologies and procedures in the border area to address issues of congestion, safety, mobility, and system efficiency for the Texas-Mexico border area. The objectives of the project include the following:

- Identify transportation problems that exist in the border area that ITS improvements can address;
- Identify ITS technologies and related procedures that would be applicable to the international border crossing environment, binational transportation planning, and the legal and logistical demands of international trade;
- Facilitate the implementation of ITS improvements in the border region; and,
- Serve as a resource document on the existing and projected characteristics that relate to transportation in the Texas-Mexico border area.

At this stage in the development of the ITS Border Plan, the emphasis is primarily on the Texas side of the border. This plan provides an incremental step towards the goal of binational transportation planning for the entire Texas/Mexico border region.

## **U.S.-MEXICAN BINATIONAL TRANSPORTATION PLANNING AND PROGRAMMING STUDY**

This study was commissioned in April 1995 under the auspices of the Joint Working Committee, a group of federal and state officials, to develop the information needed to establish a continuous joint, binational transportation planning and programming process. A goal of this study is to improve the efficiency of the existing binational policy making, planning procedures and funding criteria affecting Border Land Transportation Systems (BLTS). The BLTS is a binational transportation system made of international bridges and border crossings and its land connections to major urban and/or economic centers, principal seaports, airports and multimodal/transfer stations, and ultimately to its connections to national transportation facilities.(69)

### **Background of the Study**

In the past decade, the growth of trade between Mexico and the United States, coupled with the enactment of the North American Free Trade Agreement, has highlighted the importance of the role of efficient transportation in moving goods and people across the border. Individual cities, border states, the two national governments, and a number of private sector enterprises have various interest in and responsibilities for planning and programming the investments and operations of border transportation systems.

To accommodate even larger flows of trade under the reduced barriers specified in NAFTA, transportation officials on both sides of the border agreed to establish a framework of binational cooperation (the JWC) to help define and guide the improvements and efficiencies needed in the land transportation system in the border area. The Binational Study is the first

comprehensive (with respect to geography and institutional coverage) transportation planning effort for the border and is central to an overall initiative to establish and improve processes for developing the border's transportation capability.(70)

### **Binational Study Objectives(71)**

The overall objectives of the study include:

- Establish a transportation data bank to support a continuing transportation planning and programming process for the border region;
- Analyze policy issues and actions to improve operating efficiencies and infrastructure investments affecting U.S./Mexico border transportation systems;
- Recommend procedures to establish a border transportation planning and programming process; and
- Evaluate and recommend processes for conducting future binational transportation activities.

A U.S./Mexican team of consultants from Barton/Aschman Associates and La Empresa will complete the study by the end of 1997. The work efforts comprise three separate activities: inventory, analysis, and implementation. The inventory portion is essentially complete and has developed a literature and information base, a description of border crossing facilities, and a documentation of the transportation planning and programming processes on both sides of the border. The analyses of trade flows and forecasts, investment programs, economic impacts, applicable transportation technology, and the binational planning/programming process are in progress. Ultimately, the JWC will recommend an approach for implementing the findings and results of the binational study as a continuous joint, binational transportation planning and programming process.

## **BORDER REGIONAL TRANSPORTATION PLANNING(72)**

To better understand many of the local and regional initiatives that impact the transboundary movement of goods and people, this section of the report will highlight some of the border region's transportation planning located in the primary ports of entry: El Paso, Laredo, Brownsville, and Hidalgo. The emphasis in this discussion will be on those activities, organizations, missions, objectives, and strategies for planning/programming that relate to the transboundary movements of the affected area.

### **El Paso Regional Planning**

The transportation planning and programming process of the El Paso MPO is described in its "Long Range Transportation Plan" (LRTP) developed by the El Paso Urban Transportation Study (EPUTS) and is intended as a guide for the maintenance, management, and development of highway and transit systems in the region through the year 2015.

#### *El Paso Regional Planning Organization*

The City of El Paso has been designated as the MPO for the El Paso area that also includes the communities of Socorro, Anthony, Horizon City, Clint, and Vinton. MPO staff is located in the City of El Paso, Department of Planning, Research and Development. The Transportation Advisory Board (TAB) is composed of elected officials from the local governments within the MPO. The TAB provides the MPO with policy guidance in the planning process, it ensures coordination of transportation modes, and it proposes projects in all modes. A Steering Committee provides technical guidance to the Advisory Board. Committee members include elected officials, professionals from the private sector, and State and local personnel. They also provide specialized technical expertise on specific issues and problems.

### *El Paso Regional Planning Process*

The El Paso MPO has identified specific issues that include regional population increases, employment trends, financial issues, environmental concerns, and the impact of the North American Free Trade Agreement (NAFTA). To address these issues, the EL Paso MPO applies the "3C" planning process, mandated by federal legislation, which states that in order for areas of over 50,000 population to receive federal highway aid, projects must be based on a continuing, comprehensive, transportation planning process that is in cooperation with the State and local communities.

### *El Paso Regional Planning MPO Goals and Objectives*

The LRTP includes the following goals and objectives related to binational initiatives, which are in concurrence with overall regional values and direction:

- To establish and maintain an efficient, effective, economically viable, environmentally sensitive, and integrated transportation system for the El Paso metropolitan area; and
- To participate in regional and international transportation planning efforts that may contribute to attainment of Clean Air standards.

### *El Paso Regional Planning Strategies*

The MPO developed an extensive list of strategies to achieve the previous goals and objectives, including:

- Strengthen the International Planning Organization (IPO), which is composed of elected chief executive officers from governmental agencies in Mexico, New Mexico, and Texas;
- Take a lead role in coordinating activities in Texas, Mexico, and New Mexico, to monitor and reduce levels of carbon monoxide, ozone, and particulates;



- Encourage involvement and cooperation of non-transportation entities, such as the U.S. Customs Service, Border Patrol, and the General Services Administration, to alleviate transportation and air quality problems at international ports of entry; and,
- Recommend expansion of the international transit service.

### *El Paso Regional Planning: International Involvement*

The El Paso Urban Transportation Study area includes only part of the entire metropolitan area. Not included is Ciudad Juarez, with a population of 1.2 million persons. The LRTP recognizes the importance and influence that Juarez has on its transportation and air quality planning and programming processes. Cross border projects or studies that had been completed by the time the LRTP was published focus on transit, the environment and air quality, commercial vehicle operations, and international beltway study. International relations-related recommendations from the LRTP include coordinated highway construction, discussion of the impact of the Camino Real Intermodal Center in New Mexico, and the need for proactive regional coordination/regional planning and development.

### **Laredo Regional Planning**

The Laredo, Texas, Metropolitan Area has proposed simplified planning procedures in accordance with 23 C.F.R. 450.316(c). The Laredo Metropolitan Transportation Plan: 1995-2105 addresses all general requirements outlined in 23 C.F.R., Part 450, Subpart C.

In 1995, the Laredo Urban Transportation Study (LUTS) published the Laredo Metropolitan Transportation Plan: 1995-2015. In addition, the Urban Plan of Los Dos Laredos was published in 1994, which outlines the concurrent growth and development of Laredo and Nuevo Laredo and recommends actions to strategically address cross border issues that affect both communities.

### *Laredo Regional Planning Organization*

The Policy Committee governs the Laredo Metropolitan Planning Organization (MPO), which is chaired by the Mayor of Laredo and includes the State Senator for District 21, the State Representative for District 42, the Laredo District Engineer, the Webb County Judge and three City Council persons from the Laredo City Council. The Policy Committee has decision-making authority over transportation planning efforts in the MPO area.

### *Laredo Regional Planning Unified Planning Work Program*

The following planning issues related to binational efforts were identified in the 1996 Unified Planning Work Program (UPWP):

- Major investment studies: transborder commuter rail, rail and roadway grade separation;
- International coordination; and
- Implementation of transportation modeling and traffic count calibration.

### **Brownsville Regional Transportation Planning**

The purpose of the Brownsville Urban Transportation Study, prepared in 1994, for the Brownsville MPO, is to guide the development of the transportation system through the implementation of a prioritized list of potential transportation improvement projects through the year 2015.

### *Brownsville Regional Transportation Planning Process*

The planning process applied by the Brownsville MPO is centered around the ISTEA mandate to develop long range transportation plans. Elements of the plan relate to the fifteen factors required by ISTEA, and include "International Border Crossings and Access to Major Facilities."

### ***Brownsville Regional Transportation Planning: Public Involvement***

The Brownsville MPO has adopted a Public Involvement Policy in order to provide early and continuing public involvement opportunities in the transportation planning process. Presently, Mexican counterparts are not formally included in either the public or private sector participants in the planning process.

### **Hidalgo Regional Transportation Planning**

The Hidalgo MPO includes all the urbanized areas in Hidalgo County, including the Cities of Hidalgo, Palmview, Donna, Weslaco, Mission, Mercedes, San Juan, Alamo, Pharr, McAllen, and Edinburg. Directing the MPO is a 13 member Policy Committee and a 13 member Technical Committee. The Policy Committee consists of elected officials from the member communities, while the Technical Committee is comprised of appointed staff members from various agencies.

### ***Hidalgo Regional Transportation Planning: Metropolitan Transportation Plan***

In 1994, the MPO prepared a Long Range Transportation Plan for the area. Following the goals of ISTEA, the Plan states that the Hidalgo County transportation system should include the following internationally-related items in its outlook:

- Promote improvements in public transportation necessary to improve air quality, energy conservation, international competitiveness, mobility for elderly and disadvantaged persons; and
- Improve access to ports, airports, and international boundaries.

One of the MPO's four principal transportation goals is to promote commerce and international trade. Neither the long range plan nor the TIP describe any formal, or informal, planning relationships that have been established, or are being considered, with the Mexican communities adjacent to the Hidalgo MPO border communities.

## **PRIVATE SECTOR INVESTMENT IN BORDER INFRASTRUCTURE**

### **Camino Colombia Toll Road: A Private Sector Initiative**

Nine private toll road projects were "grandfathered" under current Texas law and, consequently, are allowed to petition the State of Texas for approval to build and operate a private toll road that is connected to the state highway system. Presently, supporters of only one of the projects, the Camino Colombia Toll Road (CCTR), have been actively pursuing approval by the Texas Department of Transportation and the Texas Transportation Commission.

To implement provisions of Texas Civil Statutes Article 6674v.1a, the Texas Transportation Commission adopted new administrative sections that prescribe the procedures and conditions by which a private entity or corporation may obtain the approval of the Commission and TxDOT to construct a privately owned toll project and connect it to the Texas system of highways.

Following the approval granted by the Laredo MPO to provide its support for the construction of the CCTR, the Texas Transportation Commission in its January 1997 meeting, granted preliminary approval for Camino Colombia, Incorporated, to proceed with the implementation of their proposal to design, finance, build and operate the first private toll road in Texas---the Camino Colombia Toll Road. This project, when completed, will provide a direct linkage from the connection at the Solidarity Bridge (*a.k.a.* Colombia Bridge) to the Interstate Highway 35 approximately 34 km north of Laredo.

The proposed CCTR<sup>(70)</sup>, a 35 km project, will be built in two phases: essentially a two-lane road (Phase I) which will be upgraded to a four-lane road (Phase II). Financing of the project, expected to cost \$64 million, will be accomplished by a private sector revenue bond issue.<sup>(73)</sup>

Revenues to repay the bond principal and interest will be generated from tolls initially ranging in the amounts from \$3.00 for passenger cars up to \$15.00 for trucks (6 axles). Traffic projections for the CCTR depend on the diversion of truck traffic from downtown

Laredo bridges, which is set to be mandated when the new Laredo Bridge (#4) is completed. In the meantime, Colombia Bridge has already been designated as the Laredo bridge for handling crossings of hazardous materials and wastes.

Yet to be determined is the exact nature of the roadway facilities to be constructed on the Mexican side of the bridge to fully complement the expected traffic on CCTR and the other truck traffic from Laredo coming to Colombia Bridges up Mines Road.

The link between Colombia Bridge and IH-35 will move the transportation system a step closer to completion in the Laredo area. Improved usage of Colombia Bridge, rerouting of truck traffic from residential areas, and improved crossing efficiencies at the remaining bridges are all very positive aspects of this project. However, it remains to be seen how financially viable the project is, and its ultimate success depends upon the amount of traffic it receives, the toll schedule it can charge its customers, and the investment/financing plan for the construction and operation of the road. At any rate, it stands as a significant move both in terms of binational transportation investment and as an innovative initiative in Texas roadway financing.

## **BINATIONAL OR MULTINATIONAL ORGANIZATIONS(74)**

### **Joint Working Committee**

The Binational Transportation Planning process (described earlier in this section) is being developed under the guidance of a US/Mexico panel of transportation officials constituted as the Joint Working Committee (JWC) by a Memo of Understanding dated April 1994. The JWC oversees funding and logistics for a binational border study that will lead to an ongoing planning process.

Presently the JWC has 20 members: four delegates from the U.S. Department of Transportation; four members from the Mexican Secretaria de Comunicaciones y Transportes (SCT); the U.S. State Department, the Mexican Department of Foreign Affairs and a delegate from each of the 10 border states. One U.S. DOT and one SCT delegate co-chair the JWC.



The current activity of the JWC is directing a binational border study that will inventory existing information and infrastructure, identify specific transportation needs, and recommend an approach to implement an ongoing, coordinated, binational planning process.

### **Land Transportation Standards Subcommittee (LTSS)**

The North American Free Trade Agreement (NAFTA) established the Land Transportation Standards Subcommittee (LTSS) to develop recommendations of standards for bus and truck operations, rail operations and transportation of hazardous materials among Canada, Mexico, and the United States. The recommendations for standards relating to motor carrier operations (e.g. weights and dimensions; tires; brakes; parts and accessories; inspections; emissions; and other environmental pollution levels not covered by other NAFTA provisions) were originally scheduled to be developed by the LTSS by January 1, 1997.

Under NAFTA and in accordance with work done by the LTSS, Mexican-based motor carriers were to be allowed to enter and depart the United States from different ports of entry and operate freely regarding international trade in Texas, California, Arizona and New Mexico after December 17, 1995, with the same privileges being given to U.S. motor carriers in the Mexican border states. However, the United States has postponed this aspect of NAFTA until additional consultations regarding safety issues are completed.

### **The Binational Conference on Bridges and Border Crossings**

Established so U.S. and Mexican delegations could focus discussions upon proposed international bridges and border crossings, the status/needs of current border crossing facilities and transportation accesses. The Conference currently consists of U.S. and Mexican delegations made up of federal agencies that have interest in or responsibility for international ports of entry, including inspections, highway/rail access, facilities construction, the environment and the international boundary. The State Department chairs the U.S. delegation,

while the Department of Foreign Relations heads the Mexican delegation. Each U.S. border state is also represented at the Conference.

### **The NAFTA Task Force**

Established (Title IV, Motor Carrier Act, Section 4008, Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA)) as a US-based group for: "a) proposing procedures for resolving disputes among States participating in the International Registration Plan and among States participating in the International Fuel Tax Agreement including designation of the Department of Transportation or any other person for resolving such disputes; and b) providing technical assistance to States participating or seeking to participate in the Plan or in the Agreement."

The NAFTA Task Force consists of state representatives from Arizona, California, Maine, Montana, New Mexico, Texas and Utah. There are also representatives from the Federal Highway Administration, the National Conference on State Legislatures, the International Registration Plan, HELP, Inc., the American Trucking Associations, the National Governors' Association and the International Fuel Tax Agreement.

The NAFTA Task Force is an effective forum for recognizing the fundamental differences in motor carrier operations among U.S. and Mexican states and Canadian provinces. Since the recommendations of the task force will be forwarded to the Base State Working Group, this is an important opportunity to influence that body.

### **The Border Trade Alliance**

A U.S. organization of public and private entities along the U.S.-Mexico border whose purpose is to act as a voice for communities along the border in U.S. regulatory and legislative processes, to improve the flow of U.S.-Mexican commerce, to develop resources necessary for border economic growth, and to advocate public-and private-sector interests. Recently, the Border Trade Alliance compiled a series of infrastructure improvement recommendations from

13 U.S. border cities and more than 400 infrastructure experts who submitted reports for their communities. The first report in the series includes recommendations for binational administration and financing of infrastructure projects.

### **The Border Station Task Force**

The Border Station Task Force is concerned primarily with U.S. border stations at international ports of entry whose purpose is to discuss border station development and improvements to existing border stations in the GSA region that includes Texas and the Southeast corner of New Mexico. The Border Station Task Force is chaired by a representative from the General Services Administration regional office in Fort Worth. Other members are also from the federal government: International Boundary and Water Commission, U.S. Section; regional representatives of federal inspection service agencies (FIS); and some FIS Washington, D.C. personnel. Some task force members are also members of the U.S. delegation to the Binational Committee on Bridges and Border Crossings. Presentations to the task force and discussions of border station projects provide valuable information and insight regarding federal agencies' attitudes towards proposed international bridges and the status of various projects.

### **The Paired City Understandings**

The paired city understandings are informal understandings with Mexican border cities in the states of Coahuila and Chihuahua and Texas border cities, and a bilateral understanding between the Mexican state of Tamaulipas and the state of Texas. Versions of these agreements have addressed these unique border area commercial vehicle operations for over 40 years. The paired city understandings describe the general procedures with regard to passenger and commercial vehicles, as well as city and chartered buses registered operating in the local area on either side of the border. Due to the postponement of the phase of NAFTA that would allow transborder trucking, the paired city understandings are still operating in the Texas -

Mexico border area.

Current operating rules were passed by the Texas Transportation Commission on November 30, 1995, as stated in its minute order number 106436. To summarize, Mexican trucks can travel within these cities' limits (and extra territorial jurisdictions) according to the provisions of the informal understandings without special registration in Texas. However, these vehicles are subject to the same safety requirements, weight limits, and financial responsibility requirements as Texas-registered trucks. Annual permits or 72/144 hour temporary permits are required for the movement of Mexican trucks traveling beyond the routes described in the informal understandings at this time.

#### **Memorandum of Understanding on Bridge Inspections**

Signed in 1991 between Texas and Mexico, this memorandum requires joint biennial inspections of the international bridges connecting Texas and the Mexican border states of Tamaulipas, Nuevo Leon, Coahuila and Chihuahua. The Bridge Inventory, Inspection and Appraisal Section (BRINSAP) of TxDOT's Design Division coordinates the joint inspections with the bridge owners and with the representative of CAPUFE, the Mexican federal toll-road and toll-bridge authority, which operates the Mexican portion of most U.S.-Mexico bridges.

## **EMERGING SCENARIOS**

The results of the inventory phase of the study, as reported here at the three levels (federal, state, other), suggested five major areas where scenarios could be useful in analyzing the transboundary movements of goods and people. These were as follows:

1. The transportation of hazardous materials.
2. Truck size, weight, operation, and safety issues.
3. Transboundary border transfer operations (goods and people).
4. Technology impacts.
5. Infrastructure needs.

Scenario development at this point is partial and incomplete. Not only is it complicated by the different levels of U.S. agencies involved but it does not yet have the Mexican dimension and the rapid development being undertaken by agencies and coalitions attempting to improve movement efficiencies makes this a moving target.

Results from the study of these scenarios are reported in a companion report, 1500-2F.



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