

DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No FMCSA-2011-0097]

Pilot Program on NAFTA Long-Haul Trucking Provisions

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for public comment.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces its proposal for the initiation of a United States-Mexico cross-border long-haul trucking pilot program to test and demonstrate the ability of Mexico-based motor carriers to operate safely in the United States beyond the municipalities and commercial zones along the United States-Mexico border. The pilot program is part of FMCSA's implementation of the North American Free Trade Agreement (NAFTA) cross-border long-haul trucking provisions. This pilot program would allow Mexico-domiciled motor carriers to operate throughout the United States for up to 3 years. U.S.-domiciled motor carriers would be granted reciprocal rights to operate in Mexico for the same period. Participating Mexican carriers and drivers would be required to comply with all applicable U.S. laws and regulations, including those concerned with motor carrier safety, customs, immigration, vehicle registration and taxation, and fuel taxation. The safety of the participating carriers would be tracked closely by FMCSA with input from a Federal Advisory Committee.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by Docket Number FMCSA-2011-0097 using any one of the following methods:

- Federal eRulemaking Portal: [http:// www.regulations.gov](http://www.regulations.gov). Follow the online instructions for submitting comments.
- Fax: 1- 202-493-2251.
- Mail: Docket Management Facility, (M-30), U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE, West Building, Ground Floor, Room 12-140, Washington, DC 20590-0001.
- Hand Delivery: Same as mail address above, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. All submissions must include the Agency name and docket number for this notice. See the “Public Participation” heading below for instructions on submitting comments and additional information.

Note that all comments received, including any personal information provided, will be posted without change to <http://www.regulations.gov>. Please see the “Privacy Act” heading below.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to Room W12-140 on the ground floor of the DOT Headquarters Building at 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment

(or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act System of Records Notice for the DOT Federal Docket Management System published in the Federal Register on January 17, 2008 (73 FR 3316), or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

Public Participation: The [www.regulations.gov](http://www.regulations.gov) website is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the "help" section of the [www.regulations.gov](http://www.regulations.gov) website. Comments received after the comment closing date will be included in the docket, and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Marcelo Perez, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001. Telephone (512) 916-5440, ext 228; e-mail [marcelo.perez@dot.gov](mailto:marcelo.perez@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### Legal Basis

Section 6901(a) of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 [Pub. L. 110-28, 121 Stat. 112, 183, May 25, 2007] provides that before DOT may obligate or expend any funds to grant authority for Mexico-domiciled trucks to engage in cross-border long-haul operations, DOT must first test granting such authority through a pilot program that meets the standards of 49 U.S.C. 31135(c). In accordance with 49 U.S.C. 31315(c), the Secretary of Transportation has general authority to have safety measures "that are designed to achieve a level of safety that is equivalent to, or greater than, the level of safety that would otherwise be achieved . . . ."

In a pilot program, DOT collects specific data for evaluating alternatives to the regulations or innovative approaches to safety while ensuring that the goals of the regulations are satisfied. A pilot program may not last more than 3 years, and the number of participants in a pilot program must be large enough to ensure statistically valid findings. Pilot programs must include an oversight plan to ensure that participants comply with the terms and conditions of participation, and procedures to protect the health and safety of study participants and the general public. A pilot program may be initiated only after DOT publishes a detailed description of it in the Federal Register and provides an opportunity for public comment. This notice and request for public comment complies with this requirement. While, a pilot program may provide temporary regulatory relief from one or more regulations to a person or class of persons subject to the regulations, or a person or class of persons who intends to engage in an activity that would be subject to the regulations, in this pilot program DOT does not propose to exempt or relieve Mexico-domiciled motor carriers from any safety regulation. Mexico-domiciled motor carriers participating in the program will be required to comply with the existing motor carrier safety regulatory regime plus certain additional requirements associated with acceptance into and participation in the program.

Section 350 of the Department of Transportation and Related Agencies Appropriations Act, 2002 [Pub. L. 107-87, 115 Stat. 833, 864, December 18, 2001] (section 350) prohibited FMCSA from using funds made available in that Act to review or process applications from Mexico-domiciled motor carriers to operate beyond limited commercial zones along the United States-Mexico border until certain preconditions and safety requirements were met. The terms of section 350 have been reenacted in each

subsequent DOT appropriations act. Section 350 required FMCSA to perform a pre-authorization safety audit (PASA) of any Mexico-domiciled carrier before that carrier is allowed to engage in long-haul operations in the United States. Vehicles the carrier will operate beyond the commercial zones of the United States-Mexico border that do not already have a Commercial Vehicle Safety Alliance (CVSA) decal would be required to be inspected, and any vehicle that did not display a decal would be required to pass an inspection at the border port of entry before being allowed to proceed. DOT was also directed to give a distinctive identification number to each Mexico-domiciled carrier that would operate beyond the border commercial zones to assist inspectors in enforcing motor carrier safety regulations. Additionally, every driver that will operate in the United States must have a valid commercial driver's license issued by Mexico. Section 350 also required DOT's Office of the Inspector General (OIG) to conduct a comprehensive review of the adequacy of inspection capacity, information infrastructure, enforcement capability and other specific factors relevant to safe operations by Mexico-domiciled carriers, and required the Secretary of Transportation to address the OIG's findings and certify that the opening of the border poses no safety risk. The OIG was also directed to conduct similar reviews at least annually thereafter. A number of the section 350 requirements were addressed by FMCSA in rulemakings published on March 19, 2002 (67 FR 12653, 67 FR 12702, 67 FR 12758, 67 FR 12776) and on May 13, 2002 (67 FR 31978).

Section 136 of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2009 [Division I of the Omnibus Appropriations Act, 2009, Pub. L. 111-8, 123 Stat. 524, 932, March 11, 2009] prohibited DOT from

expending funds made available in that Act to establish, implement or continue a cross-border motor carrier pilot program to allow Mexican-domiciled motor carriers to operate beyond the border commercial zones. The Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2010 [Division A of the Consolidated Appropriations Act, 2010, Public Law 111-117, 123 Stat. 3034, December 16, 2009] did not bar DOT or FMCSA from using funds on a cross-border long-haul program, but, pursuant to section 135 (123 Stat. at 3053) did continue the requirements of section 350. FMCSA continues to operate under the terms and conditions in its fiscal year 2010 appropriations act, as extended under various short-term continuing resolutions.

Section 6901 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 also provides that simultaneous and comparable authority to operate within Mexico must be made available to U.S. carriers. Further, before the required pilot program may begin, the Department's OIG must submit a report to Congress verifying that DOT has complied with the requirements of section 350(a), and DOT must take any actions that are necessary to address issues raised by the OIG and must detail those actions in a report to Congress. Section 6901 also directed the OIG to submit an interim report to Congress 6 months after the initiation of a cross-border long-haul Mexican trucking pilot program and a final report after the pilot program is completed. The statute further specified that the report address the program's adequacy as a test of safety. Also as a precondition to beginning the pilot program, section 6901 requires that DOT provide an opportunity for public comment by publishing in the Federal Register information on the PASA's conducted. DOT must also publish for comment the standards that will be used to evaluate the pilot program, as well as a list of

Federal motor carrier safety laws and regulations, including commercial driver's license requirements, for which the Secretary of Transportation will accept compliance with corresponding Mexican law or regulation as the equivalent to compliance with the U.S. law or regulation including an analysis of how the corresponding United States and Mexican laws and regulations differ. Further discussion of relevant U.S. and Mexican safety laws and regulations is provided in the section of this notice entitled "List of Federal Motor Carrier Safety Laws and Regulations for Which FMCSA Will Accept Compliance with a Corresponding Mexican Law or Regulation."

### Background

Before 1982, Mexico- and Canada-domiciled motor carriers could apply to the Interstate Commerce Commission (ICC) for authority to operate within the United States. As a result of complaints that U.S. motor carriers were not allowed the same access to Mexican and Canadian markets that carriers from those nations enjoyed in this country, the Bus Regulatory Reform Act of 1982 imposed a moratorium on the issuance of new operating authority to motor carriers domiciled, or owned or controlled by persons domiciled in Canada or Mexico. While the disagreement with Canada was quickly resolved, the issue of trucking reciprocity with Mexico was not.

Currently, most Mexican carriers are allowed to operate only within the border commercial zones extending up to 25 miles into the United States. Every year Mexico-domiciled commercial motor vehicles (CMVs) cross into the United States about 4.5 million times. Mexico granted reciprocal authority to 10 U.S.-domiciled motor carriers to operate throughout Mexico during the time of FMCSA's previous

demonstration project conducted between September 2007 and March 2009. Four of these motor carriers continue to operate in Mexico.

Trucking issues at the United States–Mexico border were not fully addressed until NAFTA was negotiated in the early 1990s. NAFTA required the United States to incrementally lift the moratorium on licensing Mexico-domiciled motor carriers to operate beyond the commercial zones. On January 1, 1994, the President modified the moratorium and the ICC began accepting applications from Mexico-domiciled passenger carriers to conduct international charter and tour bus operations in the United States. On December 13, 1995, the ICC published a rule and a revised application form for the processing of Mexico-domiciled property carrier applications (Form OP-1(MX) (60 FR 63981). The ICC rules anticipated the implementation of the second phase of NAFTA, providing Mexican motor carriers of property with access to California, Arizona, New Mexico and Texas, and the third phase, providing access throughout the United States. However, at the end of 1995, the United States announced an indefinite delay in opening the border to long-haul Mexican CMVs.

In 1998, Mexico filed a claim against the United States, claiming that the United States' refusal to grant authority to Mexican trucking companies constituted a breach of the obligations in the NAFTA. On February 6, 2001, the Arbitration Panel issued its final report and ruled in Mexico's favor, concluding that the United States was in breach of its obligations, and Mexico could impose tariffs on U.S. exports to Mexico up to an amount commensurate with the loss of business resulting from the lack of U.S. compliance. The Panel noted that the United States could establish a safety oversight regime to ensure the

safety of Mexican carriers entering the United States, but that the safety oversight regime could not be discriminatory and must be justified by safety data.

After the Administration announced its intent to resume the process for opening the border in 2001, Congress included section 350 in the Department of Transportation and Related Agencies Appropriations Act, 2002, as discussed in the “Legal Basis” section above.

In November 2002, former Secretary of Transportation Norman Mineta certified, as required by section 350(c)(2), that authorizing Mexico-domiciled motor carrier operations beyond the border commercial zones does not pose an unacceptable safety risk to the American public. Later that month, the President modified the moratorium to permit Mexico-domiciled motor carriers to provide cross-border cargo and scheduled passenger transportation beyond the border commercial zones. (Memorandum of November 27, 2002, for the Secretary of Transportation, “Determination under the Interstate Commerce Commission Termination Act of 1995,” 67 FR 71795, December 2, 2002). The Secretary's certification was made in response to the June 25, 2002, DOT OIG report on the implementation of safety requirements at the United States-Mexico border. In a January 2005 follow-up report, the OIG concluded that FMCSA had sufficient staff, facilities, equipment, and procedures in place to substantially meet the eight section 350 requirements that the OIG was required to review. The above reports are available in the docket to this notice.

Former Secretary of Transportation Mary E. Peters and Mexico's former Secretaria de Comunicaciones y Transportes (SCT) Luis Téllez Kuenzler announced a demonstration project to implement certain trucking provisions of NAFTA on February

23, 2007. The demonstration project was initiated on September 6, 2007, after the DOT complied with a number of conditions imposed by section 6901 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Act, 2007, as discussed further in the "Legal Basis" section above. The demonstration project was initially expected to last 1 year (see 72 FR 23883, May 1, 2007). On August 6, 2008, FMCSA announced that the demonstration project was being extended from 1 year to the full 3 years allowed by section 31315(c)(2)(A) of title 49 United States Code (73 FR 45796) after Secretaries Peters and Téllez exchanged letters on the extension.

On March 11, 2009, President Obama signed into law the Omnibus Appropriations Act, 2009. Section 136 of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2009 (Division I, title I of the Omnibus Appropriations Act, 2009) provides that:

“[N]one of the funds appropriated or otherwise made available under this Act may be used, directly or indirectly, to establish, implement, continue, promote, or in any way permit a cross-border motor carrier pilot program to allow Mexican-domiciled motor carriers to operate beyond the commercial zones along the international border between the United States and Mexico, including continuing, in whole or in part, any such program that was initiated prior to the date of the enactment of this Act.”

(123 Stat. at 932).

In accordance with section 136, FMCSA terminated the cross-border demonstration project that began on September 6, 2007. The Agency ceased processing applications by prospective project participants and took other necessary steps to comply with the provision. (74 FR 11628, March 18, 2009).

On March 19, 2009, Mexico announced that it was exercising its rights under the 2001 NAFTA Arbitration Panel decision to impose retaliatory tariffs for the failure to

allow Mexico-domiciled carriers to provide long-haul service into the United States. The tariffs affect approximately 90 U.S. export commodities at an estimated annual cost of \$2.4 billion. The President directed DOT to work with the Office of the U.S. Trade Representative and the Department of State, along with leaders in Congress and Mexican officials, to propose legislation creating a new cross-border trucking project, to address the legitimate safety concerns of Congress while fulfilling our obligations under NAFTA. Secretary of Transportation Ray LaHood met with numerous members of Congress to gather their input. FMCSA tasked the Motor Carrier Safety Advisory Committee (MCSAC) with providing advice and guidance on essential elements that the Agency should consider when drafting proposed legislation to permit Mexico-domiciled trucks beyond the commercial zones along the United States-Mexico border. The MCSAC final report on this tasking is available on FMCSA's MCSAC webpage at <http://mcsac.fmcsa.dot.gov/Reports.htm>. Additionally, DOT formed a team to draft principles that would guide the creation of the draft legislation.

The President signed the DOT Fiscal Year (FY) 2010 Appropriations Act December 16, 2009. As mentioned previously in the "Legal Basis" section, unlike the previous year's appropriations, this Act did not prohibit the use of fiscal year 2010 funds on a cross border long-haul program. However, it continues the requirements of section 350 and section 6901 of Public Law 110-28. FMCSA continues to operate under the terms and conditions in its FY 2010 appropriations act, as extended under various short-term continuing resolutions.

On April 12, 2010, Secretary LaHood met with Mexico's former Secretary of Communications and Transport, Juan Molinar Horcasitas, and announced a plan to

establish a working group to consider the next steps in implementing a cross-border trucking program. On May 19, 2010, President Obama and Mexico's President Felipe Calderon Hinojosa issued a joint statement acknowledging that safe, efficient, secure, and compatible transportation is a prerequisite for mutual economic growth. They committed to continue their countries' cooperation in system planning, operational coordination, and technical cooperation in key modes of transportation.

On January 6, 2011, Secretary LaHood shared with Congress and the Government of Mexico an initial concept document for a cross-border long-haul Mexican trucking pilot program that prioritizes safety, while satisfying the U.S.' international obligations. Also, on the same day, the Department posted the concept documents on its website for public viewing. See <http://www.dot.gov/affairs/2011/dot0111.html>. The initial concept document was the starting point for renewed negotiations with Mexico. Discussions with the Government of Mexico commenced on January 18, 2011. The preliminary agreement between DOT and the Secretariat of Communications and Transport is reflected in the program description and details provided below.

On March 3, 2011, President Obama met with Mexico's President Calderon and announced that there is a clear path forward to resolving the trucking between the United States and Mexico.

### Pilot Program Description

Duration. As specified in section 31315(c)(2)(A) of title 49, United States Code, the scheduled life of this pilot program will not exceed 3 years.

Staged pilot program. The Mexico-domiciled motor carriers that participate in this pilot program would proceed through a series of stages prior to issuance of a permanent

operating authority. Stage 1 would begin when the motor carrier is issued a provisional operating authority. The motor carrier's vehicles and drivers would be inspected each time they enter the United States for at least 3 months. This initial 3-month period may be extended if the motor carrier does not receive at least three vehicle inspections. FMCSA would also conduct an evaluation of the motor carrier's performance during Stage 1. This evaluation is described more fully later in this notice,

After a minimum of 3 months of operations in Stage 1, Mexico-domiciled carriers may be permitted to proceed to Stage 2 of the pilot program after FMCSA completes an evaluation of each carrier's performance in Stage 1. During Stage 2, the motor carrier's vehicles would be inspected at a rate comparable to other Mexico-domiciled motor carriers that cross the United States-Mexico border. The motor carrier's safety data would be monitored to assure the motor carrier is operating in a safe manner. The motor carrier would continue to operate under a provisional operating authority. Within 18 months after a Mexico-domiciled motor carrier is issued provisional operating authority, FMCSA would conduct a compliance review on the motor carrier. If the motor carrier obtains a satisfactory safety rating, has no pending enforcement or safety improvement actions, and has operated under its provisional operating authority for at least 18 months, the provisional operating authority will become permanent, moving the carrier into Stage 3. If the motor carrier obtains a less than satisfactory safety rating, FMCSA would take action as required by 49 CFR part 385 to suspend and/or revoke the motor carrier's operating authority.

Stage 3 of the pilot program would begin for each motor carrier upon receipt of permanent operating authority. The motor carrier must continue to operate in accordance

with the Federal Motor Carrier Safety Regulations (FMCSRs) and the requirements set forth in this notice.

Reciprocity with Mexico. Consistent with section 6901(a)(3) of Public law 110-28, FMCSA will not grant operating authority to Mexico-domiciled motor carriers to operate beyond the U.S. municipalities and commercial zones along the United States-Mexico border unless the Government of Mexico simultaneously permits comparable authority to be granted to U.S.-domiciled motor carriers to transport international cargo in Mexico.

Previous Demonstration Program Participants. A Mexico-domiciled motor carrier that participated in the 2007-2009 demonstration project and operated under provisional operating authority in that pilot would receive credit for the amount of time it operated under authority in calculating the 18 month provisional operating authority period.

Hazardous Materials and Passenger Transportation. Consistent with section 6901(d) of Public law 110-28, operating authority granted under the pilot program excludes the transportation of placardable quantities of hazardous materials and passengers. Hazardous materials means any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172.

Drivers and Vehicles. Mexico-domiciled motor carriers participating in the pilot program would designate the vehicles and drivers they wish to use in the pilot program. All designated vehicles and drivers must be approved by FMCSA prior to the participating motor carrier using the vehicles or drivers for transportation beyond the

commercial zones along the United States-Mexico border. The requirements for FMCSA approval of drivers and vehicles are described in this notice.

License Checks. – In compliance with section 350 (a)(3), FMCSA will ensure that at least 50 percent of participating drivers' licenses are checked when crossing the border. This may be accomplished during Level I, II or III inspections.

International Cargo. The operating authority granted under this pilot program would authorize the motor carrier to transport international cargo in the United States. As specified in 49 CFR 365.501(b), Mexico-domiciled carriers participating in the pilot program may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo. Therefore, a carrier that would provide point-to-point transportation services in the United States would be operating beyond the scope of its operating authority and would be in violation of 49 CFR 392.9a(a). Additionally, participating motor carriers must comply with regulations prohibiting the transportation of domestic cargo (cabotage) including, but not limited to, 19 CFR 123.14 (U.S. Customs and Border Protection regulations concerning entry of foreign-based trucks, buses, and taxicabs in international traffic) and 8 CFR 214.2(b)(4)(i)(E)(1) (U.S. Department of Homeland Security (DHS) regulations concerning cabotage. (See further discussion below under the section entitled "Point-to-Point Transportation Prohibited.")).

Security Screening. FMCSA would submit information on the applicant motor carriers and their drivers designated for long-haul operations in the pilot program to DHS for security screening. Motor carriers and/or drivers that fail DHS's security screening would not be eligible for participation in the pilot program. Reasons a motor carrier or

driver may not pass DHS security screening may include: providing false or incomplete information; conviction of any criminal offense or pending criminal charges or outstanding warrants; violation of any customs, immigration or agriculture regulations or laws; the carrier or driver is the subject of an ongoing investigation by any Federal, State or local law enforcement agency; the motor carrier or driver is inadmissible to the United States under immigration regulations, including applicants with approved waivers of inadmissibility or parole documentation; DHS is not satisfied concerning the motor carrier's or driver's low-risk status; DHS cannot determine an applicant's criminal, residence or employment history; or the motor carrier or driver is subject to National Security Entry Exit Registration System or other special registration programs.

Liability Insurance. Mexico-domiciled motor carriers participating in the pilot program must maintain a certificate of insurance or surety bond on file with FMCSA, as prescribed in 49 CFR 387.313, throughout the pilot program. The insurance or surety bond must be underwritten by a U.S. insurance or surety bond company.

Commercial Vehicle Safety Alliance Safety (CVSA) Decal. The motor carrier must maintain a valid CVSA decal on each vehicle it enrolls in this pilot program in accordance with 49 CFR 365.511.

Emission Control Label. Any vehicle with a diesel engine to be used by a motor carrier in this pilot program must have an emission control label as described in 40 CFR 86.007-35 that indicates the engine conforms to the U.S. Environmental Protection Agency (EPA) regulations applicable to 1998 or later. Alternatively, the motor carrier may present documentation from the engine manufacturer indicating the engine conforms to the EPA regulations applicable to 1998 or later.

Federal Motor Vehicle Safety Standard (FMVSS). Any vehicle used by a motor carrier in this pilot program must display a FMVSS certification label or Canadian Motor Vehicle Safety Standard (CMVSS) certification label affixed by the original vehicle manufacturer at the time the vehicle was built. Alternatively, a motor carrier may use a vehicle manufactured for use in Mexico that does not possess an FMVSS or CMVSS label, if the vehicle is of model year 1996 or newer and it is equipped with all the safety equipment and features required by the FMVSSs in effect on the date of manufacture, such as automatic slack adjusters and antilock braking systems (ABS) if applicable. Information available to FMCSA from the Truck Manufacturers Association (TMA) indicates that most trucks manufactured in Mexico since 1993 were built to the FMVSSs, even if they were not specifically certified as such. (70 FR 50273) A copy of TMA's letter that provided this information is available in the docket for this notice.

Electronic Monitoring Device. FMCSA would equip each vehicle approved for use by Mexico-domiciled motor carriers in this pilot program with an electronic monitoring device such as a global positioning system and/or electronic on board recording device. As part of participating in this pilot program, the device must be operational on the vehicle throughout the duration of the pilot program.

General Qualifications of Drivers. A driver may not participate in this pilot program unless the driver can read and speak the English language sufficiently to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records required by FMCSA.

Environmental Review. FMCSA will prepare an Environmental Assessment (EA) for this pilot program prior to its commencement and seek comments on the draft EA in

accordance with the National Environmental Policy Act, as amended (42 U.S.C. 4321 et seq.).

Measures To Protect the Health and Safety of the Public. The FMCSA has developed an extensive oversight system to protect the health and safety of the public and FMCSA will apply it to Mexico-domiciled motor carriers. These measures are outlined in 49 CFR parts 350–396 and include providing grants to States for commercial vehicle enforcement activities, regulations outlining the application procedures, regulations explaining how FMCSA will assess safety ratings and civil penalties as well as amounts of possible civil penalties, insurance requirements, drug and alcohol testing requirements, commercial driver’s license (CDL) requirements, general operating requirements, driver qualification requirements, vehicle parts and maintenance requirements, and hours-of-service requirements. These requirements apply to Mexico-domiciled carriers operating in this pilot program, just as they do to any commercial motor vehicle, driver, or carrier operating in the United States. The description below focuses on the main features of FMCSA’s system to protect the health and safety of the public that are unique to this pilot program, but is not intended to imply that all regulations outlined above do not apply at all times.

Other Federal and State Laws and Regulations. Mexico-domiciled motor carriers participating in the pilot program are required to comply with all applicable Federal and State laws and regulations including, but not limited to, vehicle size and weight, environmental, tax, and vehicle registration requirements.

## Process for Applying for OP-1(MX) Operating Authority

The process for applying for participation in the pilot program begins with a 28-page application that gathers specific information about the carrier, its affiliations, its insurance, its safety programs, and its compliance with U.S. laws. In addition to providing general information, the carrier must complete up to 35 safety and compliance certifications and provide information regarding its systems for monitoring hours of service and crashes and complying with DOT drug and alcohol testing requirements.

To participate in the pilot program, a Mexico-domiciled motor carrier must, pursuant to existing regulations, submit (1) Form OP-1(MX), "Application to Register Mexican Carriers for Motor Carrier Authority to Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border"; (2) Form MCS-150, the "Motor Carrier Identification Report"; and (3) notification of the means used to designate agents for service of legal process, either by submitting Form BOC-3, "Designation of Agents-- Motor Carriers, Brokers and Freight Forwarders," or a letter stating that the applicant will use a process agent service that will submit Form BOC-3 electronically. The forms are available on the Internet at <http://www.fmcsa.dot.gov/forms/print/r-l-forms.htm>.

FMCSA would compare the information and certifications provided in the application with information maintained in databases of the governments of Mexico and the United States. The appropriate fee must be submitted, as applicable.

FMCSA developed special rules that govern Mexico-domiciled motor carriers during the application process and for several years after receiving OP-1(MX) operating authority. They are codified in 49 CFR 365.501 through 365.511. These rules impose

requirements on Mexico-domiciled motor carriers in addition to those imposed on U.S.-domiciled motor carriers seeking operating authority.

#### Pre-Authorization Safety Audit

A Mexico-domiciled carrier must satisfactorily complete the FMCSA-administered PASA required under FMCSA regulations before it is granted provisional authority to operate in the United States beyond the border commercial zones. The PASA is a review of the carrier's safety management systems including written procedures and records to validate the accuracy of the information and certifications provided in the application. The PASA will determine whether the carrier has established and exercises the basic safety management controls necessary to ensure safe operations. The carrier would not be granted provisional operating authority if FMCSA determines that its safety management controls are inadequate, using the standards in Appendix A to subpart E of 49 CFR part 365. Vehicles designated for cross-border long-haul operations within the United States would be inspected; if the vehicle passes the inspection, a CVSA decal would be affixed by the inspector.

Each PASA would be conducted in accordance with 49 CFR part 365. The carrier would be denied provisional operating authority if FMCSA cannot:

1. Verify available performance data and safety management programs.
2. Verify the existence of a controlled substances and alcohol testing program consistent with 49 CFR part 40. FMCSA would ensure that the carrier has information on collection sites and laboratories it intends to use.
3. Verify a system of compliance with hours-of-service rules in 49 CFR part 395, including recordkeeping and retention.

4. Verify the carrier has the ability to obtain financial responsibility as required by 49 CFR part 387, including the ability to obtain insurance in the United States.
5. Verify records of periodic vehicle inspections, as required by 49 CFR part 396.
6. Verify that each driver the carrier intends to assign to operate under the pilot program meets the requirements of 49 CFR parts 383 and 391. This would include confirmation of the validity of each driver's Licencia Federal de Conductor (LF) through the Mexican driver license information system and a check of the Mexican State licensing records and the Commercial Driver's License Information System (CDLIS) for violations, suspensions, etc.
7. Review of available data concerning safety history and other information necessary to determine familiarity with and preparedness to comply with the FMCSRs and Federal Hazardous Materials Regulations that apply to the transportation of non-placardable hazardous materials.
8. Evaluate safety inspection, maintenance, and repair facilities or management systems, including verification of records of periodic vehicle inspections.
9. Inspect each vehicle the carrier intends to operate under the pilot program unless the vehicle has received and displays a current CVSA decal.
10. Interview carrier officials to review safety management controls and evaluate any written safety oversight policies and practices.
11. Obtain any other information required by the FMCSA to complete the PASA.

Applicant carriers would designate and identify drivers and vehicles that will perform cross-border long-haul operations in the pilot program.<sup>1</sup> FMCSA would verify driver qualifications, including confirming the validity of the driver's LF and review any Federal and State driver license history for traffic violations that would disqualify the driver for operations in the United States. FMCSA would also conduct an English Language Proficiency assessment of each participating driver to ensure compliance with 49 CFR 391.11(b)(2). The assessment would be conducted orally, in English, and would include a test on knowledge of U.S. traffic signs.

At the time of the PASA, FMCSA will inspect participating vehicles to determine whether they:

- a. Comply with the FMVSSs; and
- b. Display an EPA emission control label indicating the engine conforms to the EPA regulations applicable to 1998 or later. Alternatively, the Mexico-domiciled motor carrier can present documents from the engine manufacturer indicating the engine conforms to the EPA regulations applicable to 1998 or later.

FMCSA will also obtain the following information but will not consider the information in its evaluation of the motor carrier for entry into the program:

- a. Whether environmental post-treatment equipment or other emissions-related equipment has been installed on any vehicle designated for participating in the pilot program; and

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<sup>1</sup> Carriers' selection of specific vehicles to participate is limited to the new program only. Once the new program ends, carriers will not have the option of selecting specific vehicles. Instead, all vehicles that may enter the United States for carriers with OP-1 authority will be required to comply with all FMCSRs.

- b. The primary ports of entry the applicant Mexico-domiciled motor carrier intends to use. (There is no restriction on which ports of entry the carrier may use during the program. This information would be used to allocate FMCSA resources.)

#### Issuance of Operating Authority

If a carrier successfully completes the PASA and FMCSA approves its application, the Agency will publish a summary of the application as a provisional grant of authority in the FMCSA Register, at [http://li-public.fmcsa.dot.gov/LIVIEW/pkg\\_html.prc\\_limain](http://li-public.fmcsa.dot.gov/LIVIEW/pkg_html.prc_limain). In addition, FMCSA will publish comprehensive data and information on the PASAs conducted of Mexico-domiciled motor carriers that are granted authority to operate beyond the commercial zones on the U.S. Mexico border. However, no carrier would be authorized to conduct any cross-border long-haul transportation until it has made the insurance filings required by 49 CFR 365.507(e)(1) and designated a process agent as required by 49 CFR 365.503(a)(3). Additionally, no Mexico-domiciled motor carrier will be authorized to operate beyond the commercial zones of the United-States Mexico border until this notice-and-comment procedure is completed.

Upon granting provisional operating authority, FMCSA will assign a unique USDOT Number, including an “X” suffix, which identifies the CMVs authorized to operate beyond the municipalities and commercial zones on the United States-Mexico border.

#### Termination of the Pilot Program

The pilot program would operate for up to 3 years from the date FMCSA grants the first provisional certificate, unless the Agency collects sufficient data to draw

statistically valid conclusions before 3 years elapse or if it is determined the continuation of the pilot program would not be consistent with the goals and objectives of the pilot, in which case the pilot may be terminated earlier.

Provisional or permanent operating authority may be suspended or revoked at any time during the pilot program if FMCSA determines that the carrier has failed to comply with the terms and conditions of the pilot program or if the carrier's safety performance does not meet the standards established in 49 CFR part 385. Operating authority may also be suspended or revoked if the motor carrier is found to have transported passengers or placardable quantities of hazardous materials in the United States, or is operating beyond the scope of its operating authority.

#### Operating in the United States under OP-1(MX) Provisional Operating Authority

Mexico-domiciled motor carriers with provisional operating authority are subject to the enhanced safety monitoring program of 49 CFR part 385, subpart B, and would be monitored on an on-going basis. Carriers committing any violations specified in 49 CFR 385.105(a) and identified through roadside inspections, or other means, may be subject to a compliance review, required to submit documentation of corrective action, and/or subject to enforcement action.

#### Permanent Operating Authority

Mexico-domiciled carriers that receive a satisfactory rating after a compliance review, complete at least 18 months of operation, and have no pending enforcement or safety improvement actions, are eligible for permanent authority in the pilot program. To maintain permanent authority, carriers must comply with all FMCSRs and continue to renew the CVSA safety decal every 90 days for 3 years. During the duration of the pilot

program, carriers must update driver and vehicle records with FMCSA. Any additional vehicles or drivers the motor carrier wishes to include in the pilot program must be approved by FMCSA before the carrier may use the driver or vehicle for long-haul transportation.

Mexico-domiciled carriers that participate are eligible to convert their permanent authority granted during the pilot program to standard permanent authority, similar to U.S.-domiciled carriers, upon the completion of the pilot program. FMCSA intends this to be an administrative process that would occur once the pilot program ends.

#### Point-to-Point Transportation Prohibited

Mexico-domiciled motor carriers are also subject to DHS and DOT cabotage requirements and are prohibited from providing domestic point-to-point transportation while operating in the United States. Vehicles and drivers violating the prohibition on domestic point-to-point transportation will be placed out of service under the DOT regulations and may be subject to civil penalties. DHS may also prohibit the driver from entering the United States in the future. FMCSA, in coordination with the International Association of Chiefs of Police (IACP), developed and is providing training to State and local law enforcement agencies on the cabotage requirements.

#### Monitoring, Oversight and Enforcement

FMCSA would monitor the operational safety of all Mexico-domiciled motor carriers participating in the pilot program. To accomplish this, FMCSA would work closely with State CMV safety agencies, the lead Motor Carrier Safety Assistance Program agencies, IACP, CVSA, DHS, and others. Field monitoring would include inspections of vehicles, verification of compliance with the terms of the motor carrier's

operating authority, driver license checks, crash reporting, and initiation of enforcement actions, when appropriate.

Monitoring and oversight of carriers and drivers participating in the pilot program would vary depending on the experience and safety record of the carrier. Stage 1 of the program would require the motor carrier's participating trucks and drivers to be inspected every time a vehicle crosses the border northbound. Stage 1 vehicles must display current CVSA decals.

Carriers would progress to Stage 2 only after FMCSA evaluates the performance of the carrier during Stage 1. A carrier will be permitted to progress to Stage 2 in the pilot program if FMCSA determines that the carrier has out-of-service rates that are at or below the U.S. national averages and its Safety Management System (SMS) scores for trucks operating in the pilot program are below the FMCSA threshold levels. Once a motor carrier is in Stage 2, inspections at the border crossings would be at a rate similar to that of other Mexico-domiciled motor carriers that cross the United States-Mexico border. Stage 2 vehicles still must display current CVSA decals.

After the motor carrier successfully completes a compliance review and receives a satisfactory rating within 18 months of beginning cross-border long-haul operations, and completes 18 months of operation with provisional operating authority, the motor carrier would be granted permanent authority. The vehicles and drivers would be inspected at the border crossings at the same rate as commercial zone carriers. CMVs operating in the United States must display current CVSA decals for 3 years from the date the carrier is granted permanent operating authority.

All participating long-haul vehicles must have a FMCSA-issued electronic monitoring device installed and activated at all times. These devices would allow FMCSA to monitor compliance with pilot program requirements, including hours of service requirements and domestic point-to-point transportation prohibitions.

Monitoring would also include electronic data collection and analysis. Data collected as a result of field monitoring and other activities would be entered into FMCSA databases and made available for public review on FMCSA's website. The data would be tracked and analyzed to identify potential compliance and safety issues. Appropriate action would be taken to resolve identified compliance and safety issues. This could include suspension, revocation of operating authority, or the initiation of other enforcement action against a motor carrier or driver. FMCSA will conduct ongoing monitoring to determine if the pilot program is having adverse effects on motor carrier safety.

Enforcement is a key component of the monitoring and oversight effort. FMCSA is providing ongoing training and guidance to Federal and State auditors, inspectors and investigators to ensure the adequacy of their knowledge and understanding of the pilot program and the procedures for taking enforcement actions against carriers or drivers participating in the pilot.

To ensure carrier compliance with operating authority limitations, including the prohibition of domestic point-to-point transportation of cargo in the United States, FMCSA and IACP developed and implemented a training program that provides State and local officials detailed information on cabotage regulations and enforcement procedures.

FMCSA would require roadside enforcement officers to follow DHS guidance concerning the enforcement of DHS cabotage regulations. This material is incorporated into the CVSA North American Standard Inspection Course and previously provided to roadside enforcement officers.

FMCSA will also monitor the insurance filings of participating carriers to ensure that there are no lapses in coverage.

#### List of Federal Motor Carrier Safety Laws and Regulations for Which FMCSA Will Accept Compliance with a Corresponding Mexican Law or Regulation

The Secretary of Transportation will accept only three areas of Mexican regulations as being equivalent to U.S. regulations. The first area is the set of regulations governing Mexican Commercial Driver's Licenses (CDL). The United States' acceptance of a Mexican LF dates back to November 21, 1991, when the Federal Highway Administrator determined that the Mexican CDLs are equivalent to the standards of the U.S. regulations and entered into a Memorandum of Understanding (MOU) with Mexico.

FMCSA is in the process of updating this MOU<sup>2</sup>. As part of this process, on February 17, 2011, representatives from FMCSA, CVSA and the American Association of Motor Vehicle Administrators visited a Mexican driver license facility, medical qualification facility, and test and inspection location. During these site visits FMCSA and its partner organizations observed Mexico to have rigorous requirements for knowledge and skills testing that are similar to those in the United States. In addition, Mexico requires that all new commercial drivers undergo training prior to testing and requires additional retraining each time the license is renewed. In contrast, U.S.

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<sup>2</sup> FMCSA notes it is also updating a similar MOU with Canada.

regulations do not currently require any specific training prior to testing for, or renewal of, a U.S. CDL.

Mexico will disqualify a driver's LF for safety infractions or testing positive for the use of drugs. Because Mexico's disqualification standards are not identical to U.S. standards, FMCSA has developed a system to monitor the performance of Mexico-licensed drivers while operating in the United States and to disqualify these drivers if they incur violations that would result in a U.S. driver's license being suspended. In addition, the United States has access to traffic violation data for violations that occur in Mexico and are associated with the Mexican LF. Finally, FMCSA would require that any driver designated by a Mexico-domiciled carrier for long-haul transportation provide the United States with a copy of the driving record for any Mexican State driver's license he or she may also hold. FMCSA would combine any violations from the driver's record in the United States, the driver's Mexican federal record, and the driver's Mexican State record to determine if the driver would be disqualified from driving under the standards set forth in 49 CFR 383.51. Therefore, FMCSA is not relying solely on Mexico's disqualification standards, but is imposing its own standards in addition to any disqualifications that may be taken by the Mexican government.

Second, the Secretary of Transportation will also consider that physical examinations conducted by Mexican doctors and drug testing specimens collected by Mexican medical collection facilities are equivalent to the process for examinations conducted, and test specimens collected, in the United States. In Mexico, in order to obtain the LF a driver must meet the requirements established by the Ley de Caminos, Puentes y Autotransporte Federal (LCPAF or Roads, Bridges and Federal Motor Carrier

Transportation Act) Article 36, and Reglamento de Autotransporte Federal y Servicios Auxiliares (RAFSA, or Federal Motor Carrier Transportation Act) Article 89, which states that a Mexican driver must pass the medical examination required by Mexico's Transport and Communications Ministry (SCT), Directorship General of Protection and Prevention Medicine in Transportation (DGPMPT). This is the same medical exam performed on applicants in all modes of transportation (airline pilots, merchant mariners, and locomotive operators). The medical examination may be completed by government doctors or certified private physicians.

FMCSA examined the Mexican medical fitness for duty requirements and has found that the Mexican physical qualification regulations are more prescriptive, detailed, and stricter than those in the United States. For example, Mexican regulations address body mass index, cancers and tumors, skin and appendages, psychiatric and psychological disorders, and have specific standards for evaluation of the ear, nose and throat and the genitourinary system. These are all areas for which the United States has no regulatory standards. The only notable difference involves vision. Mexico only requires red color vision while the United States requires a color vision test for at least red, green, and yellow. FMCSA believes that, taken as a whole, Mexico's medical regulations are comparable to those in the United States, and provide a level of safety at least equivalent to the U.S. regulations. FMCSA also notes that Mexico's medical examinations are performed almost exclusively by physicians at Mexican government facilities, and when performed by private doctors, those doctors are specifically approved by the SCT.

Third, controlled substances testing in Mexico is conducted by personnel from SCT. DOT and SCT have implemented a MOU, under which Mexico has agreed to collect drug testing specimens using U.S. specimen collection procedures, including chain of custody requirements, and U.S. collection forms to ensure the integrity of the sample. DOT has translated its drug testing collection forms into Spanish as part of this MOU. Although most Mexican carriers that participated in the previous pilot program sent its drivers to U.S. collection facilities, the Secretary of Transportation would accept a drug test using a specimen collected in Mexico using our forms and procedures. Samples collected in Mexico would be tested at laboratories located in the United States that are certified by the Department of Health and Human Services under its National Laboratory Certification Program.

Table 1 below outlines the specific U.S. and Mexican regulations in the three areas where the Mexican regulations or processes are being accepted as meeting U.S. requirements.

Table 1

Description	United States	Mexico
Drug and Alcohol Testing Procedures—Random Testing.	<ul style="list-style-type: none"> <li>• 49 CFR part 382.....</li> </ul>	<ul style="list-style-type: none"> <li>• Reglamento del Servicio de Medicina Preventiva del Transporte.</li> <li>• Requires random drug testing by motor carrier at a 50 percent rate.</li> <li>• Government conducts random drug testing at terminals, ports of entry, and specific areas along corridors.</li> </ul>
Drug and Alcohol Testing Procedures—Collection of Samples	<ul style="list-style-type: none"> <li>• 49 CFR part 40.....</li> <li>• Collection of procedures outlined and detailed description of the custody.</li> </ul>	<ul style="list-style-type: none"> <li>• Reglamento del Servicio de Medicina Preventiva del Transporte.</li> <li>• DGPMPT-IT-02-01;</li> <li>• DGPMPT-PE-02-F-01.</li> <li>• DGPMPT-PE-02.</li> <li>• DGPMPT-IT-02-01 thru 08.</li> </ul>

Table 1

Description	United States	Mexico
Drug and Alcohol Testing Procedures—Laboratory Testing	<ul style="list-style-type: none"> <li>• 49 CFR part 40.....</li> <li>• Laboratories approved by the U.S. Department of Health and Human Services</li> </ul>	<ul style="list-style-type: none"> <li>• Collection procedures have been ISO certified.</li> <li>• The United States and Mexico have a Memorandum of Understanding that Mexico will, when collecting samples to satisfy U.S. drug testing regulations, use U.S. collection procedures and forms. These forms have been translated into Spanish and provided to Mexico.</li> <li>• Reglamento del Servicio de Medicina Preventiva del Transporte.</li> <li>• DGPMPT-PE-01-IE-01.</li> <li>• Regulations and procedures are equivalent to U.S. standards.</li> <li>• Laboratory is not certified due to lack of proper equipment and other procedural requirements.</li> </ul>
Commercial Driver's License—Issuance	<ul style="list-style-type: none"> <li>• 49 CFR part 383.....</li> <li>• Outlines the knowledge, skills and testing procedures required to obtain a commercial driver's license.</li> </ul>	<ul style="list-style-type: none"> <li>• Ley de Caminos, Puentes y Autotransporte Federal.</li> <li>• Artículos 89 y 90, Reglamento de Autotransportes Federal y Servicio Auxiliares.</li> <li>• Driver must provide proof of medical qualification, proof of address, and training (both skills and knowledge).</li> <li>• Must be renewed every 5 years (every 3 years for hazardous material category).</li> </ul>
Commercial Driver's License—Training	<ul style="list-style-type: none"> <li>• 49 CFR part 380.....</li> <li>• Outlines special training requirements for longer combination vehicle drivers on basic operation, safe operating practices, advanced operations and non-driving activities training and an orientation.</li> <li>• Outlines special training requirements for entry level drivers on driver qualifications, hours of service, driver wellness, and whistleblower protection training.</li> </ul>	<ul style="list-style-type: none"> <li>• Artículo 36, 37, y 57 Ley de Caminos, Puentes y Autotransporte Federal.</li> <li>• Artículos 89 y 90, Reglamento de Autotransportes Federal y Servicio Auxiliares.</li> <li>• Programa Mínimo de Capacitación para Conductores del Servicio de Autotransporte Federal y Transporte Privado, Para Referendo de Carga General (Tractorcamión Quinta Rueda y Camión Utilitario)</li> <li>• Outlines 41 hours of training requirements (theory) for new drivers transporting general cargo on General Introduction to Driving, Road</li> </ul>

Table 1

Description	United States	Mexico
Commercial Driver's License— Disqualifications	<ul style="list-style-type: none"> <li>• 49 CFR part 383.....</li> <li>• Outlines CDL disqualifications for major and serious traffic violations</li> </ul>	<p>Safety Education, Defensive Driving, Vehicle Operations, Preventive Maintenance and Emergency Repair, Latest Regulations, plus 100 hours of practical driving (behind the wheel), Practical Defensive driving (8 hours) and practical emergency repair (6 hours).</p> <ul style="list-style-type: none"> <li>• Outlines 58 (theory and practical) hours of continued training for returning drivers transporting general cargo on General Introduction, Health and Safety, Road Safety Education, Human Relations, Family and Lifestyle, Latest Rules and Technological Advances.</li> <li>• Outlines 16 hours of continuing education for drivers with a licencia federal de conductor.</li> <li>• Ley de Caminos, Puentes y Autotransporte Federal.</li> <li>• Reglamento del Servicio de Medicina Preventiva del Transporte.</li> <li>• Provides for the disqualification of drivers for major and serious traffic violations.</li> <li>• License can be canceled by a judge.</li> <li>• License can be canceled for three speeding violations in a one year period.</li> <li>• License can be canceled for leaving the scene of an accident without notifying the closest authority or abandoning the vehicle.</li> <li>• License can be canceled for altering the license.</li> <li>• License can be canceled for failing to a drug test.</li> <li>• License cannot be obtained after failing a drug test without proof of success completion of a rehabilitation program.</li> <li>• License can be suspended for failing to provide accurate information on application.</li> <li>• Cancellation is valid for 10years--cannot obtain a</li> </ul>

Table 1

Description	United States	Mexico
Medical Standards.	<ul style="list-style-type: none"> <li>• 49 CFR part 391.....</li> <li>• US—Requires a comprehensive physical and psychological examination.</li> <li>• Medical examination is currently separate from the CDL issuance process</li> </ul>	<p>license for 10 years.</p> <ul style="list-style-type: none"> <li>• Reglamento del Servicio de Medicina Preventiva del Transporte.</li> <li>• Requires a comprehensive physical and psychological examination.</li> <li>• Medical examination is a pre-requisite to obtaining an LF</li> <li>• Medical examination may be required while the driver is “in operation” (on duty) to determine if the driver is still qualified to drive.</li> </ul>

### Information and Reporting

FMCSA is committed to transparency during this pilot program. As a result, the Agency would be maintaining data on the pilot program on its website at [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov). FMCSA would use this site to post current information about the pilot program including, but not limited to, PASAs, the carriers participating, the vehicles approved for cross-border long-haul transportation, the results of roadside inspections for each carrier, and the number of trips into the United States beyond the commercial zones and the States traveled by program participants. FMCSA would also publish in the Federal Register comprehensive data and information on PASAs conducted on Mexico-domiciled carriers that are granted authority to operate beyond the border commercial zones.

The Department and Mexico’s SCT would establish a monitoring group to supervise the implementation of the pilot program and to find solutions to issues affecting the operational performance of the pilot. The group would generally convene monthly in person, by video conference or by telephone. This group, composed of DOT and SCT

employees, would discuss any issues that arise for carriers of either country, as they participate in the pilot program, and recommend changes as needed.

FMCSA is also establishing an oversight and monitoring mechanism by utilizing a Federal advisory committee. This committee would be made up of stakeholders and will be a subcommittee of the MCSAC. The monitoring group's objective is to review the implementation of the pilot program and recommend solutions to issues affecting the operational performance of the pilot program.

The Department would be providing reports to Congress regarding this pilot program on an annual basis. These reports will be posted on FMCSA's website. Additionally, at the conclusion of the pilot program the Department would report to Congress the findings, conclusions, and recommendations of the program.

Additionally, the Department's OIG will be completing reviews of the pilot program within 6 months of its start and within 6 months of its completion. These reports would be posted on the website.

### Program Evaluation

The objective of the pilot program is to collect and evaluate data on the safety performance of Mexico-domiciled carriers interested in and qualified to take advantage of the cross-border long-haul provisions of NAFTA. This study is to be completed to satisfy the requirement in the Agency's pilot program authority that requires "[a] specific data collection and safety analysis plan that identifies a method of comparison." (49 U.S.C. § 31315(c)(2)(B)). Safety performance would be measured primarily in terms of violations assessed at the roadside, as a result of inspections conducted at traditional weigh stations, ports of entry, or during traffic enforcement activities. From these data,

violation rates would be calculated for participating carriers, measuring the percentage of inspections having a particular type of violation. These violations rates include overall vehicle and driver out-of-service rates, as well as other violation rates pertaining to specific requirements of the FMCSRs. Many of these violation rates would capture information currently captured in the Agency's Compliance, Safety, Accountability program metrics.

Using the performance metrics described above, and up to 3 years of data collected during the pilot program, statistical tests would be performed to compare the safety performance of the Mexico-domiciled carriers participating in the pilot program with the overall performance of carriers domiciled in the United States. Specifically, using commonly accepted statistical practices for each metric, the Agency would test the "null hypothesis" that Mexico-domiciled carriers that may take future advantage of NAFTA's cross-border long-haul provisions will perform as well or better than the average carrier domiciled in the United States. Based on the data during the pilot program, FMCSA will either reject this null hypothesis (i.e., conclude that the Mexico-domiciled carriers interested in and qualified to receive long-haul operating authority in the United States will perform worse than the average U.S.-domiciled carrier ), or will conclude that the data collected do not allow one to reject this null hypothesis.

The degree to which differences in safety performance can be detected between the two populations depends, in part, on the total number of inspections performed on the carriers participating in the pilot program. The Agency seeks to detect statistically significant differences in the violation rates between the two populations when such differences are two percentage points in magnitude or greater, at a level of 90 percent

confidence (see discussion below under the section heading “Target Number of Inspections”). Differences less than two percentage points in magnitude between the two populations would not be considered meaningful by the Agency.

### Target Number of Inspections

A sample size of 4,100 roadside inspections performed on pilot program participants will allow the Agency to detect differences in violation rates of two percentage points or greater at the 90% level of confidence. This confidence level can be interpreted as follows: for each metric being compared, there is a less than or equal to 10% chance of concluding from the study that there is at least a two percentage point difference in the violation rates between the two populations when, in fact, there is not; or not concluding from the study that there is at least a two percentage point difference when, in fact, there is. We also note that a 90% confidence level is a commonly used level of confidence for statistical studies.

This sample size of 4,100 inspections will allow the Agency to detect two percentage point differences in any violation rate. For many metrics, however, fewer inspections will be required to achieve the same level of statistical power. This stems from the fact that for a violation rate, which is a proportion, the precision of the sample estimate depends on the value of the violation rate itself. Violation rates calculated from the study that are at or close to 50% will have the lowest level of precision, and rates that are larger or smaller than 50% will have higher levels of precision. For example, the average vehicle out-of-service rate for U.S. carriers is approximately 20%. As a result, a two percentage point difference in the vehicle out-of-service rates between the two populations can be detected with a sample size of approximately 2,800 inspections. This

same sample size of 2,800 inspections will also allow the Agency to detect a two percentage point difference in the driver out-of-service rates (which is currently approximately 5% for U.S. carriers).

### Target Number of Carriers

FMCSA anticipates that carriers participating in the pilot program will perform, on average, one long-haul border crossing per week per truck, and will have, on average, two trucks participating in the pilot program. Based on these characteristics, and an assumed attrition rate of 25% after 18 months of participation in the pilot program, the Agency calculates that a total of 46 carriers participating in the program will be sufficient to achieve a target of 4,100 inspections within 3 years. A total of 31 participating carriers will be sufficient for achieving a target of 2,800 inspections. However, if participating carriers have fewer average crossings per week or fewer vehicles enrolled in the pilot program, more carriers would be needed to achieve the desired target level of inspections. Conversely, if participating carriers have more crossings per week, or more vehicles enrolled, fewer carriers would be needed. Table 2 below provides estimates for the number of carriers needed to participate in the pilot, in order to achieve an inspection target of 4,100 inspections within 3 years:

Average Number Enrolled Vehicles	Average Number of Carrier Crossings Per Week			
	0.5	1	2	3
1	182	91	46	30
2	91	46		
3	61	30		
4	46			
5	36			

The Agency recognizes that the stipulated number of carriers needed for this analysis is lower than the target sample size originally cited for the previous demonstration project. A lower number of carriers will be needed in this program for two reasons. First, the target sample size stipulated for the earlier demonstration project was based on an effort to estimate differences in crash rates between U.S. carriers and program participants. Sample size requirements for estimating differences in crash rates are difficult to determine because the exposure (i.e., vehicle miles traveled) for the program participants, as well as the variability in this exposure, is unknown. Moreover, crashes are, in fact, rare events, and it is not likely that many, if any, will be recorded during this current effort. For these reasons, the current study focuses on measuring safety performance primarily in terms of violation rates. When estimating violation rates, the sampling unit is an inspection, rather than a carrier. The number of required carriers stipulated herein is merely an estimate of the number of carriers needed to achieve the target level of inspections.

It is also noted that this pilot program would run for up to 3 years, rather than the one and a half year duration of the demonstration project. As a result, it is anticipated that there may be more data collected from the participating carriers.

The Agency does not know how many Mexico-domiciled carriers are interested in taking advantage of the cross-border long-haul provisions of NAFTA and capable of satisfactorily completing a PASA and security screening. Currently, there are approximately 6,900 Mexican carriers operating strictly within the border commercial zones as well as approximately 1,000 U.S. -owned "certificate" carriers domiciled in Mexico and having limited operating authority in the United States. Although it is

conceivable that a large number of these carriers would be interested in taking advantage of the NAFTA cross border provisions, and qualified to do so, based on experience to date, such a level of participation is not anticipated. In the 2007 demonstration project, for example, there were 775 initial applicants, of which only 29, or 4%, completed all of the required paperwork and passed the required vetting process. Based on this data, one might set an upper limit on the total number of Mexico-domiciled carriers both capable of and interested in taking advantage of the NAFTA cross-border long-haul provision at 316 carriers ( $.04 \times 7,900$ ).

#### Representativeness of Data from the Pilot Study

If this pilot program demonstrates that Mexico-domiciled carriers are as safe as the average U.S. domiciled carrier, FMCSA would expect to use the same application and screening process for post-pilot program Mexico-domiciled carriers seeking long haul authority. Thus, carriers participating in the pilot program would be representative of carriers seeking and receiving such authority in the future.

It has also been argued that using roadside inspection data to compare carriers domiciled in the United States with Mexico-domiciled carriers participating in the pilot program is not valid because inspections performed on U.S. carriers are targeted. That is, inspectors often use recommendations generated from computer software, or perform a cursory visual inspection of the vehicle, to determine which vehicles to inspect. Hence these roadside inspections are not truly random, and violation rates (such as out-of-service rates) generated from such data are biased. Studies completed more than 15 years ago suggested that this bias in U.S. carrier out-of-service rates is minimal. To assess if such a bias currently exists, and to determine its extent, the Agency would concurrently

conduct a study of U.S. carrier violation rates, using inspection data collected on a random basis from U.S. carriers for a 2-week period during the course of the pilot program.

#### Independent Data

FMCSA plans to conduct an independent analysis of data collected from the 4 currently active Mexican carriers with “grandfathered,” pre-1982 operating authority in the United States, the 501 Mexican-owned carriers with current operating authority as a result of being domiciled in the United States, and the 1336 Mexico-domiciled private and exempt motor carriers that received a certificate of registration to operate beyond the commercial zones between 1988 and 2002. A separate analysis of these carriers’ safety performance would be conducted to supplement the analysis of the carriers operating under the pilot program.

#### Request for Comments

FMCSA requests public comment from all interested persons on the pilot program outlined in this notice. The Agency intends the pilot program to be the means of validating its safety oversight regime for a cross-border long-haul trucking program.

All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the address section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available

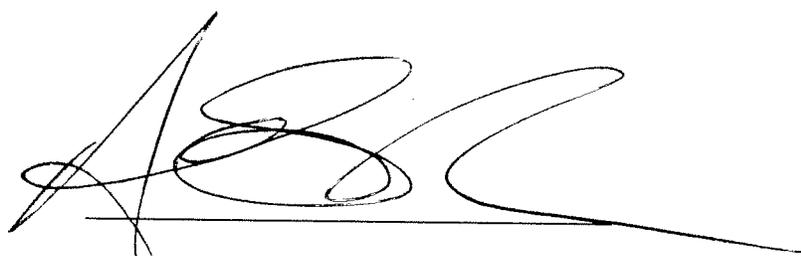
after the comment closing date. Interested persons should continue to examine the public docket for new material.

Section 6901(b)(2)(B) of the U.S. Troop Readiness, Veterans' Care, Katrina recovery, and Iraq Accountability Appropriations Act, 2007, provides that FMCSA must request public comment on five specific aspects of the pilot program. For the convenience of the reader, these items are listed below. A complete copy of section 6901 is included in the docket for this notice.

1. Comprehensive data and information on the pre-authorization safety audits conducted before and after the date of enactment of this Act of motor carriers domiciled in Mexico that are granted authority to operate beyond the United States municipalities and commercial zones on the United States-Mexico border;
2. Specific measures to be required to protect the health and safety of the public, including enforcement measures and penalties for noncompliance;
3. Specific measures to be required to ensure compliance with section 391.11(b)(2) of title 49, CFR, concerning FMCSA's English language proficiency requirement, and section 365.501(b) of title 49, CFR, concerning FMCSA's prohibition against Mexico-domiciled drivers engaging in the transportation of domestic freight within the U.S.;
4. Specific standards to be used to evaluate the pilot program and compare any change in the level of motor carrier safety as a result of the pilot program; and
5. A list of Federal motor carrier safety laws and regulations, including the commercial driver's license requirements, for which the Secretary of

Transportation will accept compliance with a corresponding Mexican law or regulation as the equivalent to compliance with the United States law or regulation, including for each law or regulation an analysis as to how the corresponding United States and Mexican laws and regulations differ.

Issued on: April 8, 2011

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Anne S. Ferro

Administrator