

# APPENDIX A – MEMORANDUM OF UNDERSTANDING

## MEMORANDUM OF UNDERSTANDING

### BETWEEN

#### THE DEPARTMENT OF TRANSPORTATION OF THE UNITED STATES OF AMERICA

### AND

#### THE SECRETARÍA DE COMUNICACIONES Y TRANSPORTES OF THE UNITED MEXICAN STATES

### ON INTERNATIONAL FREIGHT CROSS-BORDER TRUCKING SERVICES

The Department of Transportation of the United States of America (DOT) and the Secretaría de Comunicaciones y Transportes (SCT), of the United Mexican States (Mexico), hereinafter the "Parties";

ACKNOWLEDGING that one of the key objectives of the North American Free Trade Agreement (NAFTA) is to facilitate the cross-border movement of goods and services between Mexico, the United States, and Canada;

REAFFIRMING that the facilitation of the efficient movement of goods between the three countries is dependent on having international transportation systems to which the governments apply safety and security standards in a non-discriminatory manner;

ENDORISING the common desire of the United States and Mexico to fulfill their obligations as established in the NAFTA for international freight cross-border motor carrier services as a means to enhance the competitiveness and prosperity of North America; and

MINDFUL of the goal of safe, secure, and efficient movement of commerce between the United States and Mexico;

Have agreed as follows:

#### Article 1 Definitions

For the purpose of this Memorandum of Understanding:

1. "Commercial Driver's License" means a document issued by a state of the United States of America or the District of Columbia, in accordance with applicable U.S. statutes and regulations, to an individual that authorizes the individual to operate a class of commercial motor vehicle.
2. "Competent authorities" means in the case of the United States of America, the Federal Motor Carrier Safety Administration (FMCSA) of the U.S. Department of Transportation and, in the case of the United Mexican States, the Dirección General de Autotransporte Federal (DGAF) of the Secretaría de Comunicaciones y Transportes.
3. "Initial phase" means the transitional period of time in which Mexican-domiciled motor carriers that apply for operating authority from the United States of America, or in which U.S.-domiciled motor carriers that apply for operating authority from the United Mexican States are subject to the conditions as set out in Annex I to this Memorandum of Understanding.
4. "International freight cross-border trucking services" means international cargo transportation provided by motor carriers that are authorized by either the United States of America or the United Mexican States to operate in their respective territories, and in the case of the United States of America, to operate beyond the commercial zones immediately adjacent to the U.S.-Mexico border.

5. "Licencia Federal de Conductor" means a document issued by the Secretaría de Comunicaciones y Transportes of the United Mexican States, which authorizes a person to drive vehicles engaged in federal public service and private commercial vehicles of companies and industry that transport products requiring the use of Mexican federal highways.
6. "Memorandum of Understanding" means this Memorandum of Understanding (MOU), including its Annexes.
7. "Motor carrier" means a truck company domiciled in the territory of either the United States of America or the United Mexican States that has applied for or has received provisional or permanent authority for international freight cross-border trucking service.
8. "Permanent Operating Authority" means, in the case of a Mexican-domiciled motor carrier, OP-1 authority granted by FMCSA allowing the motor carrier to operate international freight cross-border trucking services in the United States that cannot be suspended or revoked unless the motor carrier receives an unsatisfactory safety rating pursuant to U.S. laws and regulations; and, in the case of a U.S.-domiciled motor carrier, authority granted by DGAF allowing the motor carrier to operate international freight cross-border trucking services in Mexico.
9. "Provisional operating authority" means, in the case of a Mexican-domiciled motor carrier, OP-1 authority granted by FMCSA allowing the motor carrier to operate international freight cross-border trucking services in the United States during an initial eighteen (18) month heightened monitoring period; and, in the case of a U.S.-domiciled motor carrier, authority granted by DGAF allowing the motor carrier to operate international freight cross-border trucking services in Mexico during an initial eighteen (18) month period.

#### Article 2

##### Scope

1. This MOU is without prejudice to the rights and obligations of the United States and Mexico under the NAFTA.
2. During the initial phase, each Party shall allow international freight cross-border trucking services in the territory of its country by motor carriers domiciled in the territory of the other country, provided that such motor carriers are complying with the conditions set forth in this MOU, including the conditions in Annex I.
3. The initial phase is to last for a period of time not to exceed three (3) years, and may be less time as mutually agreed to by the Parties.
4. Any activities relating to operations conducted under this MOU shall be conducted in accordance with applicable statutes, rules, and regulations of the United States and Mexico.
5. This MOU shall not be applicable to motor carriers engaged in the cross-border carriage of placardable hazardous materials or to motor carriers engaged in the cross-border carriage of passengers.

#### Article 3

##### Pre-Operational Conditions

1. The DOT shall grant a Mexican-domiciled motor carrier provisional operating authority for international freight cross-border trucking services in the United States provided that the pre-authority conditions set out in Section 1 of Annex I are met.
2. The SCT shall grant a U.S.-domiciled motor carrier provisional operating authority for international freight cross-border trucking services in Mexico provided that the pre-authority conditions set out in Section 2 of Annex I are met.

#### Article 4

##### Operations

1. The DOT may revoke, suspend, limit or impose conditions on the operating authority of a Mexican-domiciled motor carrier that is engaged in international freight cross-border trucking services in the United States if such motor carrier fails to comply with the conditions set out in Section 3 of Annex I, or, in the case of a motor carrier with permanent operating authority, the motor carrier fails to comply with the conditions set out in Section 5 of Annex I.
2. The SCT may revoke, suspend, limit or impose conditions on the operating authority of a U.S.-domiciled motor carrier that is engaged in international freight cross-border trucking services in Mexico if such motor carrier fails to comply with the conditions set out in Section 4 of Annex I, or, in the case of a motor carrier with permanent operating authority, the motor carrier fails to comply with the conditions set out in Section 6 of Annex I.
3. This MOU does not authorize motor carriers subject to the jurisdiction and regulations of either the United States or Mexico to engage in domestic carriage of goods point-to-point in the territory of the other country (cabotage). Either Party may take remedial

action as permitted by applicable laws or regulations, including, where appropriate, the revocation of operating authority, if its competent authority determines that a motor carrier of the other country has engaged in cabotage operations.

Article 5  
Monitoring Group

1. The Parties shall designate their representatives to a Monitoring Group established pursuant to this MOU. The Monitoring Group shall meet every month to oversee the progress of the initial phase as set out in Annex I. The meetings may occur in person, or via telephone or video conferencing.
2. The Monitoring Group shall make available for review periodic updates and reports upon the request of either Party.

Article 6  
Transition to Full Access

On the date of notification by the DOT to the U.S. Congress that the provisions of U.S. law pertaining to the initial phase, including those regarding compliance with the statistical data collection and analysis of the initial phase, have been met, the DOT will also notify SCT and the Parties shall grant motor carriers of the other Party full access to provide international freight cross-border trucking services, subject to applicable domestic laws and regulations.

Article 7  
Consultations

Either Party may, at any time, request consultations regarding the implementation or interpretation of this MOU. Such consultations shall begin at the earliest possible date, but not later than fifteen (15) days after a Party makes a request, unless otherwise agreed. Each Party shall prepare and present during such consultations relevant evidence in support of its position to facilitate consultations.

Article 8  
Amendments

This MOU may be amended at any time by written agreement of the Parties.

Article 9  
Termination

Either Party may give notice in writing to the other Party of its decision to terminate this MOU. Such termination shall take effect sixty (60) days after the date of notification, or no later than 60 days after the date of commencement of a period of consultations between the Parties as described in Article 7.

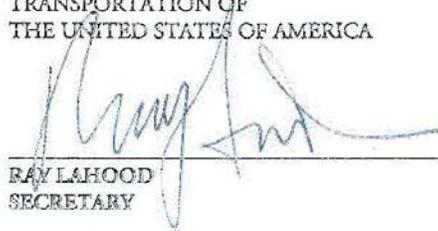
Article 10  
Entry into Force

This MOU shall enter into force upon the date of signature.

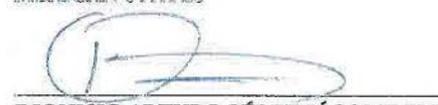
In witness whereof, the undersigned, being duly authorized by their respective governments, have signed this MOU.

Done at Mexico, D.F., in duplicate, this 6th day of July, 2011, in the English and Spanish languages, both texts being equally authentic.

BY THE DEPARTMENT OF  
TRANSPORTATION OF  
THE UNITED STATES OF AMERICA

  
\_\_\_\_\_  
RAY LAHOOD  
SECRETARY

BY THE SECRETARÍA DE  
COMUNICACIONES Y  
TRANSPORTES OF THE UNITED  
MEXICAN STATES

  
\_\_\_\_\_  
DIONISIO ARTURO PÉREZ-JÁCOME FRISCIONE  
SECRETARY

Annex I

Temporary Conditions for Motor Carrier Operations under U.S. and Mexican laws and regulations

Section 1

Pre-Authority Conditions Applicable to Mexican-domiciled motor carriers under U.S. laws and regulations

1. All Mexican-domiciled motor carriers that wish to participate in international freight cross-border trucking services in the United States are to complete the application OP-1 MX. The application, and accompanying application fee, is to be submitted to FMCSA. Motor carriers who participated in the 2007-2009 Demonstration Project are to be exempt from payment of the application fee.
2. All Mexican-domiciled motor carriers that wish to participate in international freight cross-border trucking services in the United States are to undergo a Pre-Authorization Safety Audit (PASA) performed by FMCSA, in accordance with Title 49 of the United States Code of Federal Regulations (CFR), Part 365, as may be amended. The PASA will include the following, in addition to any other requirements set out in the Federal Motor Carrier Safety Regulations (FMCSRs):
  - a. National security and criminal background vetting conducted on the applicant motor carrier and any drivers the motor carrier designates for participation in the initial phase. With respect to such vetting:
    - i. Criteria for exclusion from the initial phase are to be those used by U.S. Customs and Border Protection of the U.S. Department of Homeland Security for its global entry program.
    - ii. Motor carriers are to provide information on the drivers they wish to enroll in the initial phase, including the drivers' names, dates of birth, and Licencia Federal de Conductor license numbers.
    - iii. U.S. security agencies are to communicate to appropriate Mexican agencies, where possible, the basis for a motor carrier's or driver's exclusion from the initial phase.
  - b. Records inspections are to be conducted in accordance with 49 CFR Part 365. Among the records to be inspected are ones that facilitate the following:
    - i. Verification of available performance data and safety management programs;
    - ii. Verification of a controlled substances and alcohol testing program;
    - iii. Verification of a system for compliance with hours-of-service rules, including recordkeeping and retention;
    - iv. Verification of proof of ability to obtain insurance in the United States;
    - v. Review of available data concerning safety history and other information necessary to determine familiarity with and preparedness to comply with FMCSRs and the requirements of the Hazardous Materials Regulations (HMRs) that pertain to the transportation of non-placardable quantities of hazardous materials;
    - vi. Evaluation of safety inspection, maintenance, and repair facilities or management systems, including verification of records of periodic vehicle inspections;
    - vii. Interview with motor carrier officials to review safety management controls and evaluate any written safety oversight policies and practices; and
    - viii. Review of any other applicable information required by FMCSA personnel to complete the PASA.
  - c. Vehicle inspections are to be conducted in accordance with 49 CFR Part 365, including as follows:
    - i. Applicant motor carriers are to select and identify which vehicles will perform international freight cross-border trucking services.<sup>1</sup>

<sup>1</sup> Motor carriers' selection of specific vehicles to participate is limited to the initial phase only. Once the initial phase ends, motor carriers are not to have the option of selecting specific vehicles. Instead, all vehicles that may enter the United States for motor carriers with OP-1 authority are to complete a successful PASA and comply with all FMCSRs, in addition to all applicable state and Federal laws and regulations.

- ii. FMCSA personnel are to perform physical inspections of the vehicles during the PASA to determine compliance with:
  - 1. FMCSRs and eligibility for a Commercial Vehicle Safety Alliance (CVSA) safety decal;
  - 2. Federal Motor Vehicle Safety Standards (FMVSS); and
  - 3. U.S. Environmental Protection Agency (EPA) engine emission standards in effect as of 1998 or later.
- d. Driver inspections are to be conducted in accordance with 49 CFR Part 365, including as follows:
  - i. Applicant motor carriers are to select and identify which drivers will perform international freight cross-border trucking services.
  - ii. FMCSA personnel are to verify driver qualifications, including confirming the validity of the driver's Licencia Federal de Conductor and review any federal and state driver license history for traffic violations that could disqualify the driver for operations in the United States.
  - iii. FMCSA personnel are to conduct an English Language Proficiency exam of each participating driver. The exams are to be conducted orally in English and should test the driver's knowledge of U.S. traffic laws and signs.
- 3. The following information is to be collected at the time of the PASA, however, it is not to be used in the evaluation of the motor carrier for entry into the program:
  - a. Environmental post-treatment equipment on participating vehicles;
  - b. Any other emissions-related equipment on participating vehicles; and
  - c. Primary ports of entry the applicant carrier intends to use; there is no restriction on which ports of entry the carrier uses.

#### Section 2

##### Pre-Authority Conditions Applicable to United States-domiciled motor carriers under Mexican laws and regulations

- 1. All U.S.-domiciled motor carriers that wish to participate in international freight cross-border trucking services in Mexico are to complete the application TFC-USA-01. The application, and accompanying application fee, is to be submitted to DGAF.
- 2. All U.S.-domiciled motor carriers that wish to participate in international freight cross-border trucking services in Mexico are to be in compliance with applicable regulations in Mexico and are to undergo a Safety Assessment (Revisión de Condiciones de Seguridad (RCS)) performed by DGAF, in accordance with the rules to be published in the Official Gazette of the Federation (Diario Oficial de la Federación, DOF). The RCS is to include the following, in addition to any other requirements set out in the federal motor carrier regulations of Mexico.
  - a. Public security and criminal background vetting conducted on the applicant motor carrier and any drivers the motor carrier designates for participation in the initial phase. With respect to such vetting:
    - i. Criteria for exclusion from the initial phase for entry into Mexican territory are to be set by the correspondent's security agencies.
    - ii. Mexican security agencies are to communicate to appropriate United States agencies, where possible, the basis for a motor carrier's or driver's exclusion from the initial phase.
  - b. Inspections of the files are to be conducted in accordance with the rules that are published in the DOF. Inspections are to cover the following issues:
    - i. Verification of a program for controlled substances and alcohol testing;
    - ii. Verification of a system for compliance with hours-of-service rules, including recordkeeping and retention;
    - iii. Verification of safety management programs; and
    - iv. Evaluation of safety inspections, maintenance, and repair, including verification of records of periodic vehicle inspections over the last three (3) months;
    - v. Verification of all applicable information required by the DGAF inspectors to complete the RCS.

- c. Vehicle inspections are to be conducted in accordance with:
    - i. Commercial Vehicle Safety Alliance, CVSA, criteria;
    - ii. Official Mexican Standard NOM-068-SCT-2-2000 Federal Land Transport Motor Carrier Service for Passage, Tourism, Cargo, and Private Transport: Physical, mechanical and Safety Conditions for operations on Roads and Bridges in the Federal Jurisdiction, published in the Mexican Official Gazette on July 24, 2000, or any substitution thereof;
    - iii. Engines are to be in compliance with U.S. EPA emission standards in effect as of 1998, or later.
  - d. The drivers that the applicant carrier selects and identifies to provide international freight cross-border trucking services will have an oral examination of knowledge of Spanish. Examinations must test the driver's knowledge of regulations and road signs of Mexico.
3. Motor carriers that obtain provisional authority for 18 months of operation shall:
- a. Comply with all federal motor carrier regulations of Mexico.
  - b. Obtain within six (6) months following the granting of provisional authority, a low emission certificate, which must be carried by every vehicle. This is in compliance with NOM-041-SEMARNAT-1999 and NOM-045-SEMARNAT-1996.
  - c. When required by SCT, via DGAF, vehicles authorized to provide international freight cross-border trucking services must carry Electronic On-Board Recorders (EOBRs), or similar technology, which will be provided by SCT. DGAF will own those electronic devices and data, and may share it with the motor carrier and the FMCSA.
  - d. Provide the following driver information to the Administration of Protective and Preventive Medicine of Transport (DGPMP, Dirección General de Protección y Medicina Preventiva): social security number, passport number, commercial driver license number, proof of address, medical certificate and photograph (1" x 1.2") of the drivers who participate in the program.

### Section 3

#### Provisional Authority for Mexican-domiciled motor carriers under U.S. laws and regulations

1. Upon notification by FMCSA that the application for authority is to be granted, the applicant motor carrier is to file proof of U.S. insurance with FMCSA to obtain provisional authority to perform international freight cross-border trucking services in the United States.
2. Motor carriers are to have provisional authority for not less than 18 months of operation. A motor carrier with provisional authority that participated in the 2007-2009 Demonstration Project, and maintained safe operations for the total number of months it performed international freight cross-border trucking services under the Demonstration Project, is to receive credit for the number of months it operated in the Demonstration Project, and therefore is not to be subject to Stage 1 inspections, as described in paragraph 5.
3. Motor carriers with provisional authority are to be subject to all FMCSRs, and all U.S. laws, rules, and regulations.
4. For the length of the initial phase, FMCSA is to provide and pay for the installation of Electronic On-Board Recorders (EOBRs) on participating vehicles, until such time as required by U.S. law or regulation. The motor carriers are to submit to the installation of such devices on participating vehicles. FMCSA is to own the EOBR equipment and data and may share such data with the motor carriers and DGAF.
5. Stage 1 – At the beginning of the motor carrier's provisional authority, participating vehicles and drivers are to be inspected upon each entry into the United States for three (3) months. A motor carrier is to be inspected at least three (3) times during Stage 1, however, if not, the time may be extended beyond three (3) months.
6. Stage 2 – Upon FMCSA's review of a motor carrier's first three (3) months of provisional authority operations, and upon a satisfactory outcome of the review, participating vehicles of a motor carrier with provisional authority are no longer to be inspected upon each entry into the United States. Inspections thereafter are to occur at a level more comparable to those of motor carriers operating in the United States commercial zone, but sufficient to meet the legal requirements for a statistically valid sample of safety data. Motor carriers are to continue to maintain current CVSA safety decals in compliance with 49 CFR Part 385, as may be amended.
7. Stage 3 – Pursuant to 49 CFR Part 385, prior to the motor carrier reaching 18 months of operation under provisional authority, FMCSA is to conduct a Compliance Review. If the motor carrier receives a satisfactory safety rating as a result of the compliance review, the motor carrier is to be granted permanent authority. In accordance with 49 CFR Part 385, motor carriers that do not

receive a satisfactory safety rating are to be notified by FMCSA of their deficiencies and provided the opportunity to undergo another Compliance Review no sooner than 60 days after notification. Provided the motor carrier does not receive an unsatisfactory safety rating, the motor carriers may retain their provisional authority while correcting the deficiencies. If the motor carrier receives an unsatisfactory safety rating, the motor carrier is not to be permitted to operate within the United States until such time as the deficiencies are corrected. Failure to correct deficiencies would subject the motor carrier to the revocation of provisional authority by FMCSA.

#### Section 4

##### Provisional Authority for United States-domiciled motor carriers under Mexican laws and regulations

1. Upon notification by the DGAF that the application for authority is to be granted: the applicant motor carrier is to file a valid Mexican liability insurance policy for damage to third-parties with coverage in Mexico for a minimum amount of 19,000 days of minimum wage in the Federal District and proof of payment of the premium. The insurance policy must contain the Vehicle Identification Number (VIN) of each insured unit. This policy must be granted from a Mexican insurer with coverage in all of the territory of Mexico, a minimum validity of one year, and an endorsement to renew and not cancel before 30 days prior to the expiration of the policy.
2. Stage 1 – At the beginning of the motor carrier's provisional authority, participating vehicles and drivers may be inspected upon each entry into Mexico for three (3) months by personnel designated for this purpose.
3. Stage 2 – If motor carriers pass inspections at the border crossings into Mexico during the period in question, they will no longer to be inspected upon each entry into Mexico and will occur randomly. Motor carriers are to continue to maintain current CVSA safety decals or a physical-mechanical verification certificate pursuant to NOM-068-SCT-2-2000.
4. Stage 3 – Prior to the motor carrier reaching 18 months of operation under provisional authority, DGAF is to conduct a review to verify compliance with all federal motor carrier regulations of Mexico, and will also consider the following:
  - a. Reports of violations;
  - b. Reports of fatigue driving;
  - c. Compliance with regulations by drivers, including those on controlled substances and alcohol;
  - d. Reports of vehicle maintenance;
  - e. Accident records; and
  - f. Maintain a satisfactory rate of security, in compliance with the FMCSA criteria.

If the outcome of the compliance review is unsatisfactory, the motor carrier will be notified by DGAF of its deficiencies and will have the opportunity to correct them within a period of 30 days. The motor carrier can maintain its provisional authority while correcting the deficiencies. Failure to correct deficiencies would subject the motor carrier to the revocation of provisional authority by DGAF.

#### Section 5

##### Permanent Authority of Mexican-domiciled motor carriers under U.S. laws and regulations

1. Motor carriers that receive a satisfactory safety rating after a compliance review and complete at least 18 months of operation are to be granted permanent operating authority. Motor carriers that participated in the 2007-2009 Demonstration Project are to be granted permanent operating authority commensurate with the amount of time the motor carrier operated during the Demonstration Project.
2. To maintain permanent operating authority, motor carriers are to comply with all FMCSRs and applicable provisions of the HMRs, continue to renew their CVSA safety decals for 3 years, maintain a satisfactory safety record, and not exceed the scope of their operating authority.
3. On an ongoing basis, motor carriers are to update driver and vehicle records with FMCSA. Failure to comply with this requirement, as well as other applicable laws and regulations, may result in the revocation of operating authority.
4. Any additional vehicles or drivers the motor carrier wishes to include in the program are to be approved by FMCSA.

5. Motor carriers who complete Stage 3 of the initial phase may convert their permanent operating authority, granted during the initial phase, to standard permanent operating authority upon the termination or conclusion of the initial phase.

#### Section 6

Permanent Authority of United States-domiciled motor carriers under Mexican laws and regulations

1. Motor carriers that demonstrate compliance with all federal motor carrier regulations of Mexico may obtain a permanent operating authority by DGAF, for which the motor carrier, for each of its participating vehicles must have:
  - a. Policy of liability insurance for damage to third party property or persons; and
  - b. Certificates of low emission of pollutants.
2. The decision shall be issued within a period of 30 calendar days from the filing of all compliance requirements and a satisfactory outcome of the compliance review. If after this period, DGAF has not issued a decision, it shall be understood as affirmative.
3. To maintain permanent authority, motor carriers are to comply with all federal motor carrier regulations of Mexico and maintain a satisfactory safety rating according to FMCSA criteria, and to comply with the rules to be published in the Official Gazette of the Federation (Diario Oficial de la Federación, DOF).
4. Failure to comply with these requirements, as well as other applicable laws and regulations, may result in the application of sanctions under the existing laws.
5. Any additional vehicles or drivers the motor carrier wishes to include in the program are to be approved by DGAF.

#### Section 7

Initial Phase -- Statistically Valid Sample

In accordance with the provisions of Title 49 of the United States Code, Section 31315(c), FMCSA must use a statistically valid sample to determine whether the initial phase achieved success.

## APPENDIX B – DEFINITIONS

**Private carriers** are carriers that own the goods or equipment they transport. This category includes service companies (plumbers, construction, lawn mowing, etc.) as well as manufacturers and retailers that have their own delivery fleet (e.g. Walmart has a fleet of trucks that only transport freight owned by Walmart to its stores).

**For-Hire Carriers** are carriers that can be hired to transport freight for someone else. For-hire carriers fall into two categories:

1. Non-Exempt Carriers – Carriers that require Authority from the DOT to operate because they transport any commodity that has not been exempted by 49 U.S.C. 13506.
2. Exempt Carriers – Carriers that are exempt from applying for DOT operating authority because they transport only exempt commodities as defined by 49 U.S.C 13506. Exempt commodities are generally non-manufactured goods including agriculture products, dirt, and garbage. See information below for more on exempt carriers and exempt commodities.

**Exempt carriers:** § 13506 - Miscellaneous motor carrier transportation exemptions

(a) In General.-Neither the Secretary nor the [Surface Transportation] Board has jurisdiction under this part over-

- (1) a motor vehicle transporting only school children and teachers to or from school;
- (2) a motor vehicle providing taxicab service;
- (3) a motor vehicle owned or operated by or for a hotel and only transporting hotel patrons between the hotel and the local station of a carrier;
- (4) a motor vehicle controlled and operated by a farmer and transporting-
  - (A) the farmer's agricultural or horticultural commodities and products; or
  - (B) supplies to the farm of the farmer;
- (5) a motor vehicle controlled and operated by a cooperative association (as defined by section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) or by a federation of cooperative associations if the federation has no greater power or purposes than a cooperative association, except that if the cooperative association or federation provides transportation for compensation between a place in a State and a place in another State, or between a place in a State and another place in the same State through another State--
  - (A) for a nonmember that is not a farmer, cooperative association, federation, or the United States Government, the transportation (except for transportation otherwise exempt under this subchapter)--
    - (i) shall be limited to transportation incidental to the primary transportation operation of the cooperative association or federation and necessary for its effective performance; and
    - (ii) may not exceed in each fiscal year 25 percent of the total transportation of the cooperative association or federation between those places, measured by tonnage; and
  - (B) the transportation for all nonmembers may not exceed in each fiscal year, measured by tonnage, the total transportation between those places for the cooperative association or federation and its members during that fiscal year;

- (6) transportation by motor vehicle of--
  - (A) ordinary livestock;
  - (B) agricultural or horticultural commodities (other than manufactured products thereof);
  - (C) commodities listed as exempt in the Commodity List incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, other than frozen fruits, frozen berries, frozen vegetables, cocoa beans, coffee beans, tea, bananas, or hemp, or wool imported from a foreign country, wool tops and noils, or wool waste (carded, spun, woven, or knitted);
  - (D) cooked or uncooked fish, whether breaded or not, or frozen or fresh shellfish, or byproducts thereof not intended for human consumption, other than fish or shellfish that have been treated for preserving, such as canned, smoked, pickled, spiced, corned, or kippered products; and
  - (E) livestock and poultry feed and agricultural seeds and plants, if such products (excluding products otherwise exempt under this paragraph) are transported to a site of agricultural production or to a business enterprise engaged in the sale to agricultural producers of goods used in agricultural production;
- (7) a motor vehicle used only to distribute newspapers;
- (8)
  - (A) transportation of passengers by motor vehicle incidental to transportation by aircraft;
  - (B) transportation of property (including baggage) by motor vehicle as part of a continuous movement which, prior or subsequent to such part of the continuous movement, has been or will be transported by an air carrier or (to the extent so agreed by the United States and approved by the Secretary) by a foreign air carrier; or
  - (C) transportation of property by motor vehicle in lieu of transportation by aircraft because of adverse weather conditions or mechanical failure of the aircraft or other causes due to circumstances beyond the control of the carrier or shipper;
- (9) the operation of a motor vehicle in a national park or national monument;
- (10) a motor vehicle carrying not more than 15 individuals in a single, daily roundtrip to commute to and from work;
- (11) transportation of used pallets and used empty shipping containers (including intermodal cargo containers), and other used shipping devices (other than containers or devices used in the transportation of motor vehicles or parts of motor vehicles);
- (12) transportation of natural, crushed, vesicular rock to be used for decorative purposes;
- (13) transportation of wood chips;
- (14) brokers for motor carriers of passengers, except as provided in section 13904(d); or
- (15) transportation of broken, crushed, or powdered glass.

(b) Exempt Unless Otherwise Necessary.-Except to the extent the Secretary or Board, as applicable, finds it necessary to exercise jurisdiction to carry out the transportation policy of section 13101, neither the Secretary nor the Board has jurisdiction under this part over-

- (1) transportation provided entirely in a municipality, in contiguous municipalities, or in a zone that is adjacent to, and commercially a part of, the municipality or municipalities, except-

- (A) when the transportation is under common control, management, or arrangement for a continuous carriage or shipment to or from a place outside the municipality, municipalities, or zone; or
  - (B) that in transporting passengers over a route between a place in a State and a place in another State, or between a place in a State and another place in the same State through another State, the transportation is exempt from jurisdiction under this part only if the motor carrier operating the motor vehicle also is lawfully providing intrastate transportation of passengers over the entire route under the laws of each State through which the route runs;
- (2) transportation by motor vehicle provided casually, occasionally, or reciprocally but not as a regular occupation or business, except when a broker or other person sells or offers for sale passenger transportation provided by a person authorized to transport passengers by motor vehicle under an application pending, or registration issued, under this part; or
- (3) the emergency towing of an accidentally wrecked or disabled motor vehicle.

## APPENDIX C – PRESIDENTIAL ORDERS

June 5, 2001, [66 F.R. 30799](#)

### DETERMINATION UNDER THE INTERSTATE COMMERCE COMMISSION TERMINATION ACT OF 1995

#### **Memorandum for the Secretary of Transportation**

Section 6 of the Bus Regulatory Reform Act of 1982 [[section 6 of Pub.L. 97-261](#), see Tables for classification] imposed a moratorium on the issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by, persons of a contiguous foreign country, and authorized the President to modify the moratorium. The Interstate Commerce Commission Termination Act of 1995 (ICCTA) [Pub.L. 104-88, Dec. 29, 1995, 109 Stat. 803; see Tables for classification] maintained these restrictions, subject to modifications made prior to the enactment of the ICCTA, and authorized the President to make further modifications to the moratorium. The relevant provisions of the ICCTA are codified at 49 U.S.C. 13902.

The North American Free Trade Agreement (NAFTA) established a schedule for liberalizing certain restrictions on investment in truck and bus services. Pursuant to 49 U.S.C. 13902(c)(3), I have determined that the following modifications to the moratorium are consistent with obligations of the United States under NAFTA and with U.S. transportation policy, and that the moratorium shall be modified accordingly. First, enterprises domiciled in the United States that are owned or controlled by persons of Mexico will be allowed to obtain operating authority to provide truck services for the transportation of international cargo between points in the United States. Second, enterprises domiciled in the United States that are owned or controlled by persons of Mexico will be allowed to obtain operating authority to provide bus services between points in the United States. These modifications shall be effective today.

Pursuant to 49 U.S.C. 13902(c)(5), I have determined that expeditious action is required to implement these modifications to the moratorium. Effective today, the Department of Transportation will accept and expeditiously process applications, submitted by enterprises domiciled in the United States that are owned or controlled by persons of Mexico, to obtain operating authority to provide truck services for the transportation of international cargo between points in the United States or to provide bus services between points in the United States.

Motor carriers domiciled in the United States that are owned or controlled by persons of Mexico will be subject to the same Federal and State regulations and procedures that apply to all other U.S. carriers. These include safety regulations, such as drug and alcohol testing; insurance requirements; taxes and fees; and all other applicable laws and regulations, including those

administered by the U.S. Customs Service, the Immigration and Naturalization Service, and the Department of Labor.

This memorandum shall be published in the **Federal Register**.

GEORGE W. BUSH

## **APPENDIX D – NORTH AMERICAN FREE TRADE AGREEMENT TEXT**

### Article 305, “Temporary Admission of Goods”

#### 5. Subject to Chapters Eleven (Investment) and Twelve (Cross Border Trade in Services):

- a) each Party shall allow a vehicle or container used in international traffic that enters its territory from the territory of another Party to exit its territory on any route that is reasonably related to the economic and prompt departure of such vehicle or container;
- b) no Party may require any bond or impose any penalty or charge solely by reason of any difference between the port of entry and the port of departure of a vehicle or container;
- c) no Party may condition the release of any obligation, including any bond, that it imposes in respect of the entry of a vehicle or container into its territory on its exit through any particular port of departure; and
- d) no Party may require that the vehicle or carrier bringing a container from the territory of another Party into its territory be the same vehicle or carrier that takes such container to the territory of another Party.

6. For purposes of paragraph 5, "vehicle" means a truck, a truck tractor, tractor, trailer unit or trailer, a locomotive, or a railway car or other railroad equipment.

### Article 1102, “National Treatment”

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
2. Each party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
3. The treatment according by a Party under paragraphs 1 and 2 means, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded in like circumstances by that state or province to investors, and to investments of investors, of the Party of which it forms a part.
4. For greater certainty, no Party may:
  - a) Impose on an investor of another Party a requirement that a minimum level of equity in an enterprise in the territory of the Party be held by its nationals, other than nominal qualifying shares for directors or incorporators of incorporations; or
  - b) Require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment in the territory of the Party.

Article 1103, “Most-Favored Nation Treatment”:

1. Each Party shall accord to investors of another Party treatment no less favorable than it accords in like circumstances to investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
2. Each party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
3. Article 1201: Scope and Coverage
4. This Chapter applies to measures adopted or maintained by a Party relating to cross-border trade in services by service providers of another Party, including measures respecting:
  - (a) the production, distribution, marketing, sale and delivery of a service;
  - (b) the purchase or use of, or payment for, a service;
  - (c) the access to and use of distribution and transportation systems in connection with the provision of a service;
  - (d) the presence in its territory of a service provider of another Party; and
  - (e) the provision of a bond or other form of financial security as a condition for the provision of a service.

Article 1202: National Treatment

1. Each Party shall accord to service providers of another Party treatment no less favorable than that it accords, in like circumstances, to its own service providers.
2. The treatment accorded by a Party under paragraph 1 means, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that state or province to service providers of the Party of which it forms a part.

Article 1203: Most-Favored-Nation Treatment

Each Party shall accord to service providers of another Party treatment no less favorable than that it accords, in like circumstances, to service providers of any other Party or of a non-Party.

Article 1204: Standard of Treatment

Each Party shall accord to service providers of any other Party the better of the treatment required by Articles 1202 and 1203.

Article 1205: Local Presence

No Party may require a service provider of another Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border provision of a service.

## Annex 1

Sector:	Transportation
Sub-Sector:	Land Transportation
Industry Classification:	SIC 4213 - Trucking, Except Local SIC 4215 - Courier Services, Except by Air SIC 4131 - Intercity and Rural Bus Transportation SIC 4142 - Bus Charter Service, Except Local SIC 4151 - School Buses (limited to interstate transportation not related to school activity)
Type of Reservation:	National Treatment (Articles 1102, 1202) Most-Favored-Nation Treatment (Articles 1103, 1203) Local Presence (Article 1205)
Level of Government:	Federal
Measures:	49 U.S.C. § 10922( <i>l</i> ) (1) and (2)  49 U.S.C. § 10530(3)  49 U.S.C. §§ 10329, 10330 and 11705  19 U.S.C. § 1202  49 C.F.R. § 1044  Memorandum of Understanding Between the United States of America and the United Mexican States on Facilitation of Charter/Tour Bus Service, December 3, 1990
Description:	As qualified by paragraph 2 of the Description element <u>Cross-Border Services</u>  1. Operating authority from the Interstate Commerce Commission (ICC) is required to provide interstate or cross-border for hire bus or truck services in the territory of the United States. A moratorium remains in place on new grants of operating authority for persons of Mexico.

2. The moratorium does not apply to the provision of crossborder charter or tour bus services.
3. Under the moratorium, persons of Mexico without operating authority may operate only within ICC Border Commercial Zones, for which ICC operating authority is not required. Persons of Mexico providing truck services, including for hire, private, and exempt services, without operating authority are required to obtain a certificate of registration from the ICC to enter the United States and operate to or from the ICC Border Commercial Zones. Persons of Mexico providing bus services are not required to obtain an ICC certificate of registration to provide these services to or from the ICC Border Commercial Zones.
4. Only persons of the United States, using U.S.registered and either U.S.-built or dutypaid trucks or buses, may provide truck or bus service between points in the territory of the United States.

#### Investment

5. The moratorium has the effect of being an investment restriction because enterprises of the United States providing bus or truck services that are owned or controlled by persons of Mexico may not obtain ICC operating authority.

Phase-Out:

#### Cross-Border Services

A person of Mexico will be permitted to obtain operating authority to provide:

(a) three years after the date of signature of this Agreement, crossborder truck services to or from border states (California, Arizona, New Mexico and Texas), and such persons will be permitted to enter and depart the territory of United States through different ports of entry;

(b) three years after the date of entry into force of

this Agreement, crossborder scheduled bus services; and

(c) six years after the date of entry into force of this Agreement, crossborder truck services.

### Investment

A person of Mexico will be permitted to establish an enterprise in the United States to provide:

(a) three years after the date of signature of this Agreement, truck services for the transportation of international cargo between points in the United States; and

(b) seven years after the date of entry into force of this Agreement, bus services between points in the United States.

The moratorium will remain in place on grants of authority for the provision of truck services by persons of Mexico between points in the United States for the transportation of goods other than international cargo.

## APPENDIX E – NAFTA CHRONOLOGY – PRE-1982 - 2011

- Before 1982:
  - Mexico-domiciled for-hire motor carriers were eligible to apply for operating authority in the same manner as U.S. and Canadian motor carriers.
  - Mexico-domiciled private carriers and for-hire carriers providing exempt commodity transportation were not required to obtain operating authority.
- 1982 - The Bus Regulatory Reform Act of 1982 imposed a moratorium on the issuance of new operating authority for regulated for-hire Mexico-domiciled carriers and allowed Mexico-domiciled motor carriers with existing authority to continue operations (as “grandfathered” carriers). However, because DOT did not regulate Mexico-domiciled private carriers and for-hire carriers of exempt commodities, these carriers were unaffected by the moratorium.
- 1984: The Motor Carrier Safety Act of 1984 directed the Interstate Commerce Commission (ICC) to issue “certificates of registration” to the previously unregulated Mexico-domiciled for-hire exempt commodities carriers and private carriers to provide transportation service in the United States.
- 1985 - The ICC adopted a final rule implementing the certificates of registration requirements. The rule specified that if the carrier was U.S.-owned (certificated carrier) it was not restricted to the border commercial zones. However, if the carrier was Mexican-owned, it was restricted to the border commercial zones.
- December 1992 - President George H.W. Bush signed the NAFTA Agreement.
- December 1993 - President Clinton signed authorizing legislation implementing NAFTA.
- January 1994 - President Clinton modified the moratorium imposed by the Bus Regulatory Reform Act of 1982 and allowed Mexican charter and tour bus services into the United States.
- December 1995 - DOT Secretary Federico Pena announced an indefinite delay in “opening” the border to Mexican commercial truck and scheduled passenger bus operations due to safety concerns with vehicles. Secretary Pena also delayed implementation of the investment provisions of NAFTA for U.S. transportation companies.
- February 2001 - A NAFTA dispute resolution panel ruled that the blanket exclusion of Mexican trucking companies from the United States violated U.S. NAFTA obligations. The NAFTA dispute resolution panel also ruled that regulations for Mexico-domiciled motor carriers did not need to be identical to those for U.S. based motor carriers.
- March 2001 - President George W. Bush reaffirmed his commitment to make compliance with the NAFTA transportation access provisions a high priority.

- October 2001 - Congress passed the Fiscal Year (FY) 2002 DOT Appropriations bill (later signed by the President) which, in section 350, included 22 distinct requirements that the DOT had to comply with to assure the safe operation of Mexican commercial vehicles in the United States beyond the border commercial zones.
- March 2002 – FMCSA published a series of rules, which fulfilled the Congressional mandate under section 350 for regulating safe operation of Mexican vehicles in the United States.
- June 2002 - President Bush lifted the moratorium preventing majority ownership of U.S. transportation companies by persons from Mexico.
- October 2002 - DOT Secretary Norman Mineta certified compliance with the 22 conditions identified in the 2002 appropriations bill.
- November 2002 - President Bush modified the moratorium, imposed by the Bus Regulatory Reform Act of 1982, on scheduled bus operations to allow cross-border scheduled bus service into the United States.
- January 2003 - The U.S. Court of Appeals for the Ninth Circuit invalidated three regulations required under section 350 of the FY 2002 DOT Appropriations Act.
- June 2004 - The U.S. Supreme Court in *DOT v. Public Citizen* reversed a decision of the U.S. Court of Appeals for the Ninth Circuit that had set aside on environmental grounds, FMCSA's application and safety monitoring regulations for Mexican motor carriers seeking to operate throughout the United States.
- August 2004 - The U.S. Court of Appeals for the Ninth Circuit issued an order recalling its mandate in *DOT v. Public Citizen* and remanding the matter to DOT for further proceedings consistent with the Supreme Court's decision.
- November 2004 - Secretary Mineta met with Mexican SCT Secretary Cerisola, as part of the U.S.-Mexico Binational Commission meeting seeking a Mexican proposal on asymmetrical implementation.
- March 2005 - DOT crafted a proposal for a demonstration project that would implement NAFTA access provisions over time and, at least initially, define numbers of participating carriers on both sides. However, this plan was placed on hold while Mexico developed its own proposal.
- December 2005 - DOT and SCT reached informal agreement to launch a demonstration project.
- May 2006 - Presidents Bush and Fox agreed in principle to the demonstration project concept at their summit meeting in Cancún.

- September 2006 – Representatives from both DOT and SCT completed discussions on provisions to implement a demonstration project.
- February 2007 - DOT Secretary Mary Peters announced plans for a joint U.S.-Mexico demonstration project that would allow a maximum of 100 carriers to provide long-haul truck transportation services in each other’s territory.
- March 2007 - Secretary Peters and FMCSA Administrator John Hill participated in Congressional hearings concerning the announced demonstration project.
- May 2007 - President Bush signed the Iraq Supplemental Appropriations Act, which included additional requirements for DOT to meet before implementing the NAFTA trucking provisions. Among those requirements was a provision that DOT must test the granting of provisional long-haul operating authority first through a pilot program meeting the requirements of the pilot program statute.
- June 2007 - FMCSA published a Federal Register Notice outlining its plans to implement the cross-border truck demonstration project.
- August 2007 - FMCSA published a supplemental Federal Register Notice providing more information on the cross-border demonstration project.
- September 2007 - FMCSA officially began the demonstration project by issuing provisional operating authority to a Mexico-domiciled motor carrier on September 6, 2007. The same month, the DOT OIG issued a report required under the Iraq Supplemental Appropriations Act outlining the issues pertaining to implementing the cross-border truck demonstration project. The FMCSA responded to Congress on the findings detailed in the OIG report.
- October 2007 - FMCSA published a supplemental Federal Register notice providing more information on the cross-border demonstration project.
- December 2007 - President Bush signed the DOT FY 2008 Appropriations Act, which prohibited DOT from utilizing funds to “establish” a cross-border demonstration program. The DOT interpreted the appropriations prohibition as not affecting the ongoing demonstration project on the grounds that it had been “established” prior to enactment of the prohibition.
- February 2008 - A hearing was held in the U.S. Court of Appeals for the Ninth Circuit regarding the legal proceedings initiated by The Sierra Club and its coalition.
- March 2008 - The DOT OIG issued a required interim report on the status of the cross-border demonstration project. The FMCSA published a supplemental Federal Register notice providing more information on the cross-border demonstration project. The same month, Secretary Mary Peters participated in a Congressional hearing concerning the cross-border demonstration project.

- July 2008 – The FMCSA published a supplemental Federal Register notice providing more information on the cross-border demonstration project.
- August 2008 - Secretary Peters announced a two-year extension of the cross-border demonstration project.
- March 2009 - Congress included language in the DOT FY 2009 Appropriations Act prohibiting the Department from spending any additional funds on the Mexican cross-border program. The demonstration project was immediately terminated. Shortly thereafter, Mexico announced its decision to impose retaliatory tariffs on the United States.
- April 2009 - The U.S. Court of Appeals for the Ninth Circuit ruled that, due to the termination of the cross-border demonstration project, the Sierra Club petition (argued in February 2008) was moot and dismissed the petition.
- August 2009 - President Obama met with then-President Calderon at the North American Leaders Summit. President Obama expressed the Administration's goal to address the safety concerns raised by Congress while fulfilling the United States' NAFTA commitments.
- December 2009: President Obama signed the FY 2010 Appropriations Act which Act did not include a prohibition on the use of funds for the program. However, it continued the requirements of section 350 of Pub. L. 107–87 and section 6901 of Pub. L. 110–28, which requires that DOT first test the granting of long haul cross-border operating authority to Mexico-domiciled motor carriers as part of a pilot program.
- Spring 2010 - Secretary of Transportation Ray LaHood met with his Mexican counterpart, Juan Molinar Horcasitas, the Secretaria de Comunicaciones y Transportes (SCT), and announced an agreement to establish a working group to consider the next steps in implementing a cross-border trucking program.
- January 2011 - Secretary LaHood shared an initial concept document for a long-haul cross-border Mexican trucking program with Congress and the government of Mexico. The concept document prioritized safety, while satisfying the United States' international obligations. FMCSA published the document on its website, which made the concept document available to the general public.
- March 2011 - President Obama and President Calderon held a joint press conference and announced that a clear path forward had been found to resolve the NAFTA trucking issue and phase out Mexico's retaliatory tariffs.
- April 2011 - FMCSA published a proposal for a cross-border, long-haul trucking pilot program in the Federal Register.

- July 2011 - Secretary Ray LaHood signed the Memorandum of Understanding with the Government of Mexico. Two days later, FMCSA published responses to comments in the Federal Register and announced its intent to proceed with the Pilot Program. Upon publication of this notice, Mexico suspended half of the tariffs.
- October 2011 - The first Pilot Program carrier was granted authority and crossed the U.S.-Mexico border to transport international goods into the United States. Upon this grant of Pilot Program long-haul authority, Mexico suspended the remainder of the tariffs.

## APPENDIX F – STATUTES AFFECTING THE PILOT PROGRAM

Public Law 107-87, Appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 2002 (and all subsequent years), Section 350:

### SAFETY OF CROSS-BORDER TRUCKING BETWEEN UNITED STATES AND MEXICO.

(a) No funds limited or appropriated in this Act may be obligated or expended for the review or processing of an application by a Mexican motor carrier for authority to operate beyond United States municipalities and commercial zones on the United States-Mexico border until the Federal Motor Carrier Safety Administration--

(1)(A) requires a safety examination of such motor carrier to be performed before the carrier is granted conditional operating authority to operate beyond United States municipalities and commercial zones on the United States-Mexico border;

(B) requires the safety examination to include--

(i) verification of available performance data and safety management programs;

(ii) verification of a drug and alcohol testing program consistent with part 40 of title 49, Code of Federal Regulations;

(iii) verification of that motor carrier's system of compliance with hours-of-service rules, including hours-of-service records;

(iv) verification of proof of insurance;

(v) a review of available data concerning that motor carrier's safety history, and other information necessary to determine the carrier's preparedness to comply with Federal Motor Carrier Safety rules and regulations and Hazardous Materials rules and regulations;

(vi) an inspection of that Mexican motor carrier's commercial vehicles to be used under such operating authority, if any such commercial vehicles have not received a decal from the inspection required in subsection (a)(5);

(vii) an evaluation of that motor carrier's safety inspection, maintenance, and repair facilities or management systems, including verification of records of periodic vehicle inspections;

(viii) verification of drivers' qualifications, including a confirmation of the validity of the Licencia de Federal de Conductor of each driver of that motor carrier who will be operating under such authority; and

(ix) an interview with officials of that motor carrier to review safety management controls and evaluate any written safety oversight policies and practices.

(C) requires that--

(i) Mexican motor carriers with three or fewer commercial vehicles need not undergo on-site safety examination; however 50 percent of all safety examinations of all Mexican motor carriers shall be conducted onsite; and

(ii) such on-site inspections shall cover at least 50 percent of estimated truck traffic in any year.

- (2) requires a full safety compliance review of the carrier consistent with the safety fitness evaluation procedures set forth in part 385 of title 49, Code of Federal Regulations, and gives the motor carrier a satisfactory rating, before the carrier is granted permanent operating authority to operate beyond United States municipalities and commercial zones on the United States-Mexico border, and requires that any such safety compliance review take place within 18 months of that motor carrier being granted conditional operating authority, provided that--
- (A) Mexican motor carriers with three or fewer commercial vehicles need not undergo onsite compliance review; however 50 percent of all compliance reviews of all Mexican motor carriers shall be conducted on-site; and
  - (B) any Mexican motor carrier with 4 or more commercial vehicles that did not undergo an on-site safety exam under (a)(1)(C), shall undergo an on-site safety compliance review under this section.
- (3) requires Federal and State inspectors to verify electronically the status and validity of the license of each driver of a Mexican motor carrier commercial vehicle crossing the border;
- (A) for every such vehicle carrying a placardable quantity of hazardous materials;
  - (B) whenever the inspection required in subsection (a)(5) is performed; and
  - (C) randomly for other Mexican motor carrier commercial vehicles, but in no case less than 50 percent of all other such commercial vehicles.
- (4) gives a distinctive Department of Transportation number to each Mexican motor carrier operating beyond the commercial zone to assist inspectors in enforcing motor carrier safety regulations including hours-of-service rules under part 395 of title 49, Code of Federal Regulations;
- (5) requires, with the exception of Mexican motor carriers that have been granted permanent operating authority for three consecutive years--
- (A) inspections of all commercial vehicles of Mexican motor carriers authorized, or seeking authority to operate beyond United States municipalities and commercial zones on the United States-Mexico border that do not display a valid Commercial Vehicle Safety Alliance inspection decal, by certified inspectors in accordance with the requirements for a Level I Inspection under the criteria of the North American Standard Inspection (as defined in section 350.105 of title 49, Code of Federal Regulations), including examination of the driver, vehicle exterior and vehicle under-carriage;
  - (B) a Commercial Vehicle Safety Alliance decal to be affixed to each such commercial vehicle upon completion of the inspection required by clause (A) or a re-inspection if the vehicle has met the criteria for the Level I inspection; and
  - (C) that any such decal, when affixed, expire at the end of a period of not more than 90 days, but nothing in this paragraph shall be construed to preclude the Administration from requiring reinspection of a vehicle bearing a valid inspection decal or from requiring that such a decal be removed when a certified Federal or State inspector determines that such a

vehicle has a safety violation subsequent to the inspection for which the decal was granted.

(6) requires State inspectors who detect violations of Federal motor carrier safety laws or regulations to enforce them or notify Federal authorities of such violations;

(7)(A) equips all United States-Mexico commercial border crossings with scales suitable for enforcement action; equips 5 of the 10 such crossings that have the highest volume of commercial vehicle traffic with weigh-in-motion (WIM) systems; ensures that the remaining 5 such border crossings are equipped within 12 months; requires inspectors to verify the weight of each Mexican motor carrier commercial vehicle entering the United States at said WIM equipped high volume border crossings; and

(B) initiates a study to determine which other crossings should also be equipped with weigh-in-motion systems;

(8) the Federal Motor Carrier Safety Administration has implemented a policy to ensure that no Mexican motor carrier will be granted authority to operate beyond United States municipalities and commercial zones on the United States-Mexico border unless that carrier provides proof of valid insurance with an insurance company licensed in the United States;

(9) requires commercial vehicles operated by a Mexican motor carrier to enter the United States only at commercial border crossings where and when a certified motor carrier safety inspector is on duty and where adequate capacity exists to conduct a sufficient number of meaningful vehicle safety inspections and to accommodate vehicles placed out-of-service as a result of said inspections.

(10) publishes--

(A) interim final regulations under section 210(b) of the Motor Carrier Safety Improvement Act of 1999 (49 U.S.C. 31144 note) that establish minimum requirements for motor carriers, including foreign motor carriers, to ensure they are knowledgeable about Federal safety standards, that may include the administration of a proficiency examination;

(B) interim final regulations under section 31148 of title 49, United States Code, that implement measures to improve training and provide for the certification of motor carrier safety auditors;

(C) a policy under sections 218(a) and (b) of that Act (49 U.S.C. 31133 note) establishing standards for the determination of the appropriate number of Federal and State motor carrier inspectors for the United States-Mexico border;

(D) a policy under section 219(d) of that Act (49 U.S.C. 14901 note) that prohibits foreign motor carriers from leasing vehicles to another carrier to transport products to the United States while the lessor is subject to a suspension, restriction, or limitation on its right to operate in the United States; and

(E) a policy under section 219(a) of that Act (49 U.S.C. 14901 note) that prohibits foreign motor carriers from operating in the United States that is found to have operated illegally in the United States.

(b) No vehicles owned or leased by a Mexican motor carrier and carrying hazardous materials in a placardable quantity may be permitted to operate beyond a United States

municipality or commercial zone until the United States has completed an agreement with the Government of Mexico which ensures that drivers of such vehicles carrying such placardable quantities of hazardous materials meet substantially the same requirements as United States drivers carrying such materials.

(c) No vehicles owned or leased by a Mexican motor carrier may be permitted to operate beyond United States municipalities and commercial zones under conditional or permanent operating authority granted by the Federal Motor Carrier Safety Administration until--

(1) the Department of Transportation Inspector General conducts a comprehensive review of border operations within 180 days of enactment to verify that--

(A) all new inspector positions funded under this Act have been filled and the inspectors have been fully trained;

(B) each inspector conducting on-site safety compliance reviews in Mexico consistent with the safety fitness evaluation procedures set forth in part 385 of title 49, Code of Federal Regulations, is fully trained as a safety specialist;

(C) the requirement of subparagraph (a)(2) has not been met by transferring experienced inspectors from other parts of the United States to the United States-Mexico border, undermining the level of inspection coverage and safety elsewhere in the United States;

(D) the Federal Motor Carrier Safety Administration has implemented a policy to ensure compliance with hours-of-service rules under part 395 of title 49, Code of Federal Regulations, by Mexican motor carriers seeking authority to operate beyond United States municipalities and commercial zones on the United States-Mexico border;

(E) the information infrastructure of the Mexican government is sufficiently accurate, accessible, and integrated with that of United States enforcement authorities to allow United States authorities to verify the status and validity of licenses, vehicle registrations, operating authority and insurance of Mexican motor carriers while operating in the United States, and that adequate telecommunications links exist at all United States-Mexico border crossings used by Mexican motor carrier commercial vehicles, and in all mobile enforcement units operating adjacent to the border, to ensure that licenses, vehicle registrations, operating authority and insurance information can be easily and quickly verified at border crossings or by mobile enforcement units;

(F) there is adequate capacity at each United States-Mexico border crossing used by Mexican motor carrier commercial vehicles to conduct a sufficient number of meaningful vehicle safety inspections and to accommodate vehicles placed out-of-service as a result of said inspections;

(G) there is an accessible database containing sufficiently comprehensive data to allow safety monitoring of all Mexican motor carriers that apply for authority to operate commercial vehicles beyond United States municipalities and commercial zones on the United States-Mexico border and the drivers of those vehicles; and

(H) measures are in place to enable United States law enforcement authorities to ensure the effective enforcement and monitoring of license revocation and licensing procedures of Mexican motor carriers.

(2) The Secretary of Transportation certifies in writing in a manner addressing the Inspector General's findings in paragraphs (c)(1)(A) through (c)(1)(H) of this section that the opening of the border does not pose an unacceptable safety risk to the American public.

(d) The Department of Transportation Inspector General shall conduct another review using the criteria in (c)(1)(A) through (c)(1)(H) consistent with paragraph (c) of this section, 180 days after the first review is completed, and at least annually thereafter.

(e) For purposes of this section, the term 'Mexican motor carrier' shall be defined as a Mexico-domiciled motor carrier operating beyond United States municipalities and commercial zones on the United States-Mexico border.

(f) In addition to amounts otherwise made available in this Act, to be derived from the Highway Trust Fund, there is hereby appropriated to the Federal Motor Carrier Safety Administration, \$25,866,000 for the salary, expense, and capital costs associated with the requirements of this section.

Pub. L. 110-28, U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Section 6901:

:

(a) Hereafter, funds limited or appropriated for the Department of Transportation may be obligated or expended to grant authority to a Mexico-domiciled motor carrier to operate beyond United States municipalities and commercial zones on the United States-Mexico border only to the extent that--

(1) granting such authority is first tested as part of a pilot program;

(2) such pilot program complies with the requirements of section 350 of Public Law 107-87 and the requirements of section 31315(c) of title 49, United States Code, related to pilot programs; and

(3) simultaneous and comparable authority to operate within Mexico is made available to motor carriers domiciled in the United States.

(b) Prior to the initiation of the pilot program described in subsection (a) in any fiscal year--

(1) the Inspector General of the Department of Transportation shall transmit to Congress and the Secretary of Transportation a report verifying compliance with each of the requirements of subsection (a) of section 350 of Public Law 107-87, including whether the Secretary of Transportation has established sufficient mechanisms to apply Federal motor carrier safety laws and regulations to 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 and to ensure compliance with such laws and regulations; and

(2) the Secretary of Transportation shall take such action as may be necessary to address any issues raised in the report of the Inspector General under subsection (b)(1) and submit a report to Congress detailing such actions; and publish in the

Federal Register, and provide sufficient opportunity for public notice and comment--

- (i) 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;
- (ii) specific measures to be required to protect the health and safety of the public, including enforcement measures and penalties for noncompliance;
- (iii) specific measures to be required to ensure compliance with section 391.11(b)(2) and section 365.501(b) of title 49, Code of Federal Regulations;
- (iv) 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
- (v) 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.

(c) During and following the pilot program described in subsection (a), the Inspector General of the Department of Transportation shall monitor and review the conduct of the pilot program and submit to Congress and the Secretary of Transportation an interim report, 6 months after the commencement of the pilot program, and a final report, within 60 days after the conclusion of the pilot program. Such reports shall address whether--

- (1) the Secretary of Transportation has established sufficient mechanisms to determine whether the pilot program is having any adverse effects on motor carrier safety;
- (2) Federal and State monitoring and enforcement activities are sufficient to ensure that participants in the pilot program are in compliance with all applicable laws and regulations; and
- (3) the pilot program consists of a representative and adequate sample of Mexico-domiciled carriers likely to engage in cross-border operations beyond United States municipalities and commercial zones on the United States-Mexico border.

(d) In the event that the Secretary of Transportation in any fiscal year seeks to grant operating authority for the purpose of initiating cross-border operations beyond United States municipalities and commercial zones on the United States-Mexico border either with Mexico-domiciled motor coaches or Mexico-domiciled commercial motor vehicles carrying placardable quantities of hazardous materials, such activities shall be initiated only after the conclusion of a separate pilot program limited to vehicles of the pertinent type. Each such separate pilot program shall follow the same requirements and processes stipulated under subsections (a) through (c) of this section and shall be planned, conducted and evaluated in concert with the Department of Homeland Security or its Inspector General, as appropriate, so as to address any and all security concerns associated with such cross-border operations.

# APPENDIX G – PILOT PROGRAM CONCEPT DOCUMENT

January 6, 2011

## CONCEPT DOCUMENT

### PHASED U.S.-MEXICO CROSS-BORDER LONG HAUL TRUCKING PROPOSAL

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#### PRE – OPERATIONS ELEMENTS

1. Application: Interested Mexican Carriers apply for long-haul operating
  - Passenger and hazardous materials carriers will not be included in this program.
  - Subject to negotiation with Mexico, the number of carrier and truck participants in first phase of program will be managed to ensure adequate oversight.
2. Vetting
  - Applicant carriers' information is vetted by DHS and DOJ.
  - Driver specific information from applicant carriers is vetted by DHS and DOJ.
3. Pre-Authority Safety Audit (PASA)
  - Review carrier's safety management programs (vehicle maintenance, drug and alcohol testing programs, driver qualification files, etc.).
  - Review driving records for only those drivers who would participate in cross-border long haul operations.
  - Review the combined driving record of drivers who would participate in the program (U.S. driving history, Mexican Federal license history, and Mexican State license history).
  - Inspection of each vehicle to be used in the phased in program.
  - Check all participating vehicles for Federal Motor Vehicle Safety Standards (FMVSS) certification.
  - Check all participating vehicles for EPA emissions standards.
  - Conduct an English Language Proficiency and US Traffic Laws knowledge test of each driver participating in the program, conducted in English.
  - Review of all convictions, crashes and inspections in Mexico in determining carrier's safety record.
4. Document Mexican Commercial Driver's License process to demonstrate comparability.
5. Insurance - If PASA is successfully completed, applicant must submit evidence of financial responsibility (insurance) to FMCSA.

#### OPERATIONS ELEMENTS

1. Monitoring
  - Inspections
  - For an agreed upon period of time a carrier's long-haul operations, vehicles and drivers would be inspected by FMCSA each time one of its vehicles crosses the northbound border.
  - Electronic Monitoring - The program will use available technology to provide redundant monitoring of program's trucks, drivers and carriers.
  - Initial, phased in access.

1

January 6, 2011

2. Follow Up Review (1<sup>st</sup> Review) - Each Mexican trucking company would undergo a follow-up review to ensure continued safe operation. After the follow-up review, the company's trucks would be subject to border inspections at FMCSA's normal border inspection rate<sup>i</sup> and subject to inspections in the interior of the U.S. at the same rate as U.S. companies. Additionally, the company must maintain a valid safety inspection sticker.
3. Compliance Review (2<sup>nd</sup> Review) - After successful completion of a compliance review and earning a Satisfactory Safety Rating, the participating carrier will be eligible for full operating authority.
4. FMCSA Reviews
  - Insurance Monitoring – FMCSA monitors the participating carriers' insurance filings to ensure there are no lapses in coverage.
  - FMCSA conducts compliance reviews of drug and alcohol collection and testing facilities used by participating carriers.

#### TRANSPARENCY ELEMENTS

1. Federal Register Notices – FMCSA publishes a Federal Register notice describing the proposed program and docket appropriate analyses and seeks comment on the program.
2. Publically Accessible Web Site – FMCSA develops and maintains a public web site that provides information on participating carriers.
3. Federal Advisory Committee – DOT establishes a Federal Advisory Committee Act group with representation from a diverse group of stakeholders.
4. Periodic Reports to Congress – DOT is required by statute to submit annual reports to Congress.
5. Office of the Inspector General – DOT OIG is required by statute to submit reports to Congress.

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<sup>i</sup> Note: Drivers' licenses will still be checked at a 50 percent rate in accordance with requirements in section 350 of the Department of Transportation and Related Agencies Appropriations Act, 2002 (Pub. L. 107-87, Dec. 18, 2001).

# APPENDIX H – FEDERAL REGISTER NOTICES

Federal Register / Vol. 76, No. 71 / Wednesday, April 13, 2011 / Notices

20807

*Petitioner:* Netjets Aviation, Inc.  
*Section of 14 CFR Affected:* § 43.3(g).  
*Description of Relief Sought:* Netjets requests relief from the requirements of § 43.3(g) to allow its pilots that are properly trained and qualified under an approved training program, to perform supervised updates of navigational software databases of installed flight management systems.

[FR Doc. 2011-8857 Filed 4-12-11; 8:45 am]  
BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Notice of Final Federal Agency Actions on the Sellwood Bridge Project, SE Tacoma Street and Oregon Highway 43, Multnomah County, OR

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation.

**ACTION:** Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

**SUMMARY:** This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(j)(1). The actions relate to a proposed highway project, Sellwood Bridge, SE Tacoma Street and Oregon 43, in Multnomah County, Oregon. This action grants approval for the project.

**DATES:** By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(j)(1). A claim seeking judicial review of the Federal agency actions that are covered by this notice will be barred unless the claim is filed on or before October 11, 2011. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** Jeff Graham, Operations Engineer, Federal Highway Administration, 530 Center Street, NE., Suite 100, Salem, Oregon 97301; (503) 399-5749; [Jeffrey.Graham@dot.gov](mailto:Jeffrey.Graham@dot.gov). The FHWA Oregon Division's Office's normal business hours are 7:30 a.m. to 4:15 p.m. (Pacific time).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions subject to 23 U.S.C. 139(j)(1) by issuing licenses, permits, and approvals for the following highway project in the State of Oregon: Sellwood Bridge Project in Multnomah County, Oregon. The project will replace the existing bridge

within its existing east-west corridor along SE Tacoma Street and construct a new interchange with Oregon 43 on the west end. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on July 26, 2010, in the FHWA Record of Decision (ROD) issued September 30, 2010, and in other documents in the FHWA project files. The FEIS, ROD, and other project records are available by contacting the FHWA or the Oregon Department of Transportation at the addresses provided above. The FHWA FEIS and ROD can be viewed and downloaded from the project Web site at <http://www.sellwoodbridge.org> or viewed at public libraries in the project area.

This notice applies to all Federal agency final actions taken after the issuance date of the FHWA **Federal Register** notice described above. The laws under which actions were taken include, but are not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321-4351]; Federal-Aid Highway Act (FAHA) [23 U.S.C. 109 and 23 U.S.C. 128].
2. Air: Clean Air Act (CAA) [42 U.S.C. 7401-7671(q)].
3. Land: Section 4(f) of the Department of Transportation Act of 1966 (4f) [49 U.S.C. 303].
4. Wildlife: Endangered Species Act (ESA) [16 U.S.C. 1531-1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661-667(d)]; Migratory Bird Treaty Act (MBTA) [16 U.S.C. 703-712].
5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended (106) [16 U.S.C. 470(f) et seq.]; Archeological Resources Protection Act of 1977 (ARPA) [16 U.S.C. 470(aa)-470(ll)]; Archeological and Historic Preservation Act (AHPA) [16 U.S.C. 469-469(c)].
6. Social and Economic: Civil Rights Act of 1964 (Civil Rights) [42 U.S.C. 2000(d)-2000(d)(1)].
7. Wetlands and Water Resources: Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251-1377]; Rivers and Harbors Act of 1899 (RHA) [33 U.S.C. 401-406]; Wetlands Mitigation (Sections 103 and 133) [23 U.S.C. 103(b)(6)(M) and 133(b)(11)].
8. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 12898, Federal Actions to Address Environmental Justice in Minority

Populations and Low Income Populations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 139(j)(1).

Issued on: April 5, 2011.

**Jeff Graham,**

*Operations Engineer, Salem, Oregon.*

[FR Doc. 2011-8835 Filed 4-12-11; 8:45 am]

BILLING CODE 4910-22-P

## DEPARTMENT OF TRANSPORTATION

### 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 May 13, 2011.

**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>. 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 <http://www.regulations.gov> Web site 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 <http://www.regulations.gov> Web site. 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. 31135(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, Pub. L. 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 Web page 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 Web site 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-1-forms.htm>.

[www.fmcsa.dot.gov/forms/print/r-1-forms.htm](http://www.fmcsa.dot.gov/forms/print/r-1-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

<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. 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

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>. 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 Web site. 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. 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 (DGPMP). 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

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

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 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>• DGPMPPT-IT-02-01; DGPMPPT-PE-02-F-01.</li> <li>• DGPMPPT-PE-02.</li> <li>• DGPMPPT-IT-02-01 thru 08.</li> <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> </ul>
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>• Reglamento del Servicio de Medicina Preventiva del Transporte.</li> <li>• DGPMPPT-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>• Articulos 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> </ul>	<ul style="list-style-type: none"> <li>• Articulo 36, 37, y 57 Ley de Caminos, Puentes y Autotransporte Federal.</li> <li>• Articulos 89 y 90, Reglamento de Autotransportes Federal y Servicio Auxiliares.</li> <li>• Programa Minimo de Capacitacion para Conductores del Servicios de Autotransporte Federal y Transporte Privado, Para Referendo de Carga General (Tractorcamion Quinta Rueda y Camion Utilitario).</li> </ul>

TABLE 1—Continued

Description	United States	Mexico
Commercial Driver's License—Disqualifications	<ul style="list-style-type: none"> <li>• Outlines special training requirements for entry level drivers on driver qualifications, hours of service, driver wellness, and whist-blower protection training.</li> <li>• 49 CFR part 383 .....</li> <li>• Outlines CDL disqualifications for major and serious traffic violations.</li> </ul>	<ul style="list-style-type: none"> <li>• Outlines 41 hours of training requirements (theory) for new drivers transporting general cargo on General Introduction to Driving, Road 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).</li> <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 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 10 years—cannot obtain a license for 10 years.</li> </ul>
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>	<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 Web site at <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 Web site. 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 Web site.

#### 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:

TABLE 2—NUMBER OF PILOT PROGRAM CARRIERS REQUIRED TO ACHIEVE A TARGET OF 4,100 INSPECTIONS, BY VEHICLES ENROLLED PER CARRIER AND CROSSINGS PER WEEK PER CARRIER

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.-wined "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.

Anne S. Ferro,  
Administrator.

[FR Doc. 2011-8846 Filed 4-8-11; 2:00 pm]  
BILLING CODE 4910-EX-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Docket No. AB-1075X]

#### Manufacturers Railway Company— Discontinuance Exemption—in St. Louis County, MO

On March 24, 2011, Manufacturers Railway Company (MRS)<sup>1</sup> filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over all tracks and yards located within the area bordered by Cedar Street on the north to Zipp Street on the south; and

<sup>1</sup> MRS is owned by Anheuser-Busch Companies, Inc.

Mississippi River flood wall on the east to U.S. Interstate 55 on the west, in St. Louis, Mo. The lines traverse U.S. Postal Service Zip Code 63118. MRS intends to discontinue service over its lines but does not intend, at this point, to remove the trackage or rail assets comprising the lines.

According to MRS, the lines do not contain any Federally granted rights-of-way. Any documentation in MRS's possession will be made available promptly to those requesting it.

MRS asserts that, because its petition seeks discontinuance covering MRS's entire rail system and because MRS has no corporate affiliate that will continue substantially similar rail operations or a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad, labor protective conditions should not be imposed. MRS requests that the Board follow its established practice regarding labor conditions in entire system discontinuances. The United Transportation Union, the Brotherhood of Maintenance of Way Employees Division-International Brotherhood of Teamsters, and the International Association of Machinists and Aerospace Workers have filed separate statements or comments in opposition to the petition, asserting that affected employees are entitled to labor protection. The Board will consider and address comments on the petition, including comments regarding labor protection, in its final decision on the merits.

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by July 12, 2011.

Because this is a discontinuance proceeding and not an abandonment, OFAs to purchase the line for continued rail service are not appropriate. Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) to subsidize continued rail service will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a \$1,500 filing fee. See 49 CFR 1002.2(f)(25).

Because this is a discontinuance proceeding and not an abandonment, a trail use/rail banking condition, under 16 U.S.C. 1247(d), and a public use condition, under 49 U.S.C. 10905, are not appropriate. Additionally, no environmental or historic documentation is required under 49 CFR 1105.6(c)(2) and 1105.8.

All filings in response to this notice must refer to Docket No. AB-1075X, and must be sent to: (1) Surface

Transportation Board, 395 E Street, SW., Washington, DC 20423-0001; and (2) Paul A. Cunningham, Harkins Cunningham LLP, 1700 K Street, NW., Suite 400, Washington, DC 20006-3804. Replies to the petition are due on or before May 3, 2011.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0230 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245-0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: April 8, 2011.

By the Board, Rachel D. Campbell,  
Director, Office of Proceedings.

Andrea Pope-Matheson,  
Clearance Clerk.

[FR Doc. 2011-8863 Filed 4-12-11; 8:45 am]

BILLING CODE 4915-01-P

## DEPARTMENT OF THE TREASURY

### Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, § 10(a)(2), that a meeting will be held at the Hay-Adams Hotel, 16th Street and Pennsylvania Avenue, NW., Washington, DC, on May 3, 2011 at 11:30 a.m. of the following debt management advisory committee:

Treasury Borrowing Advisory Committee of The Securities Industry and Financial Markets Association.

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues and conduct at working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, § 10(d) and Public Law 103-202, § 202(c)(1)(B) (31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, § 10(D) and vested me by Treasury Department Order No. 101-05, that the meeting will consist of

## **APPENDIX H – FEDERAL REGISTER NOTICES**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Agency Information Collection Activities: Requests for Comments; Clearance of Reinstated Approval of Information Collection: Dealer's Aircraft Registration Certificate Application**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to reinstate a previously discontinued information collection. AC Form 8050-5 is an application for a dealer's Aircraft Registration Certificate which, under 49 United States Code 1404, may be issued to a person engaged in manufacturing, distributing, or selling aircraft.

**DATES:** Written comments should be submitted by September 6, 2011.

**FOR FURTHER INFORMATION CONTACT:** Carla Scott on (202) 385-4293, or by e-mail at: [Carla.Scott@faa.gov](mailto:Carla.Scott@faa.gov).

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120-0024.

*Title:* Dealer's Aircraft Registration Certificate Application.

*Form Numbers:* AC Form 8050-5.

*Type of Review:* Reinstatement of an information collection.

*Background:* Federal Aviation Regulation Part 47 prescribes procedures that implement Public Law 103-272, which provides for the issuance of dealer's aircraft registration certificates and for their use in connection with aircraft eligible for registration under this Act by persons engaged in manufacturing, distributing or selling aircraft. Dealer's certificates enable such persons to fly aircraft for sale immediately without having to go through the paperwork and expense of applying for and securing a permanent Certificate of Aircraft Registration. It also provides a system of identification of aircraft dealers.

*Respondents:* 2,135 aircraft dealers.

*Frequency:* Information is collected on occasion.

*Estimated Average Burden per Response:* 45 minutes.

*Estimated Total Annual Burden:* 1,601.25 hours.

**ADDRESSES:** Send comments to the FAA at the following address: Ms. Carla Scott, Room 336, Federal Aviation

Administration, AES-300, 950 L'Enfant Plaza, SW., Washington, DC 20024.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on June 29, 2011.

**Carla Scott,**

*FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES-200.*

[FR Doc. 2011-17208 Filed 7-7-11; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration**

**[Docket No FMCSA-2011-0097]**

**Pilot Program on the North American Free Trade Agreement (NAFTA) Long-Haul Trucking Provisions**

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

**ACTION:** Notice; response to public comments.

**SUMMARY:** The Federal Motor Carrier Safety Administration (FMCSA) announces its intent to proceed with the initiation of a United States-Mexico cross-border long-haul trucking pilot program to test and demonstrate the ability of Mexico-domiciled motor carriers to operate safely in the United States beyond the municipalities in the United States on the United States-Mexico international border or the commercial zones of such municipalities (border commercial zones).

**DATES:** This notice is effective July 8, 2011.

**ADDRESSES:** You may search background documents or comments to the docket for this notice, identified by docket number FMCSA-2011-0097, by visiting the:

• *eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for reviewing documents and comments. Regulations.gov is

available electronically 24 hours each day, 365 days a year; or:

• *DOT Docket Room:* Room W12-140 on the ground floor of the DOT Headquarters Building at 1200 New Jersey Avenue, SE., Washington, DC 20590 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>.

**FOR FURTHER INFORMATION CONTACT:**

Marcelo Perez, FMCSA, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001. Telephone (202) 366-9597; e-mail [marcelo.perez@dot.gov](mailto:marcelo.perez@dot.gov).

**SUPPLEMENTARY INFORMATION:** On April 13, 2011, FMCSA published a notice in the **Federal Register** announcing its plans to initiate a pilot program as part of FMCSA's implementation of the NAFTA cross-border long-haul trucking provisions in compliance with section 6901(b)(2)(B) of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, and requested public comments on those plans. FMCSA reviewed, assessed, and evaluated the required safety measures as noted in the notice, and considered all comments received on or before May 13, 2011, in response to the April 13, 2011, notice. Additionally, to the extent practicable, FMCSA considered comments received after May 13, 2011. Once the U.S. Department of Transportation's (DOT) Inspector General completes his report to Congress required by section 6901(b)(1) and the Agency completes any follow up actions needed to address issues raised in the report, FMCSA will proceed with the pilot program. FMCSA made changes and clarified elements of the program as a result of comments to the docket. For example, the Agency will include International Registration Plan (IRP) and International Fuel Tax Association (IFTA) information in its pre-authority safety audit (PASA) process; posted the Mexican regulations in both English and Spanish in the docket for this notice; elaborated on the inspection of available vehicles operating in the United States during

the compliance review (CR); and confirmed that the PASA information will be published in the **Federal Register**.

As indicated in the April 13, 2011, **Federal Register** notice, this pilot program will not include operations that transport placarded amounts of hazardous materials or passengers. In addition, on May 31, 2011, Mexico published its regulations that will govern a U.S. motor carrier's application for authority to operate in Mexico. In its regulations, Mexico specifies several types of transportation services, vehicles, and operations as ineligible for authority to operate into Mexico. These include oversized or overweight goods, industrial cranes, vehicle towing or rescue, or packaging and courier services. Mexico is allowing U.S. motor carriers of international freight to operate into Mexico. Mexico has excluded these services, vehicles, and operations from the program because they are not classified as, or pertinent to, freight operations in Mexico; rather these types of operations are subject to separate operating authority requirements than freight motor carriers. While the United States does not distinguish between these types of freight operations, in order to comply with the reciprocity requirements of section 6901(a)(3), the United States will not issue authority to Mexico-domiciled motor carriers to transport oversized or overweight goods, industrial cranes, or operate vehicle towing, rescue or packaging and courier services in this pilot program.

#### 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] (2007 Appropriations Act) 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. 31315(c). In accordance with 49 U.S.C. 31315(c)(2), in proposing a pilot program, the Secretary of Transportation (Secretary) has general authority to conduct pilot programs "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 typically 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. Accordingly, on April 13, 2011, the Agency published a notice announcing its intention to conduct a pilot program and soliciting comment (76 FR 20807). This document responds to comments to the April 13, 2011 notice and provides additional information about the planned pilot program as requested by commenters. 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 (49 U.S.C. 31315(c)(1) and (2)), in this pilot program DOT does not propose to exempt or relieve Mexico-domiciled motor carriers from any FMCSA safety regulation or evaluate any less stringent alternatives to existing 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 6901(a) of the 2007 Appropriations Act, the terms of which have been incorporated in each subsequent DOT appropriations act, also provides that this pilot program must comply with 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). Section 350 prohibited FMCSA from using funds made available in the 2002 DOT Appropriations Act to review or process applications from Mexico-domiciled motor carriers to operate beyond the border commercial zones until certain preconditions and safety requirements were met. The terms of section 350 have also been incorporated in each subsequent DOT appropriations act. Section 350(a)(1) required FMCSA to perform a PASA of any Mexico-domiciled motor carrier before that motor carrier is allowed to engage in long-haul operations in the United

States. Vehicles the motor carrier will operate beyond the border commercial zones that do not already have a Commercial Vehicle Safety Alliance (CVSA) decal are required to pass an inspection at the border port of entry and obtain a decal before being allowed to proceed. Section 350(a)(4) also required DOT to give a distinctive identification number to each Mexico-domiciled motor carrier that would operate beyond the border commercial zones to assist inspectors in enforcing motor carrier safety regulations. Additionally, every driver who will operate in the United States must have a valid commercial driver's license issued by Mexico. Section 350(c)(1) 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 motor carriers; and section 350(c)(2) required the Secretary 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 31976).

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] (2009 Appropriations Act) prohibited DOT from expending funds made available in the 2009 Appropriations Act to establish, implement, or continue a cross-border motor carrier pilot program to allow Mexico-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, Pub. L. 111-117, 123 Stat. 3034, December 16, 2009] (2010 Appropriations Act) did not bar DOT or FMCSA from using funds on a cross-border long-haul program; but, pursuant to section 135 of the 2010 Appropriations Act (123 Stat. at 3053) did retain the requirements of section 6901 and section 350. Section 1101(a)(6) of the Full-Year Continuing Appropriations Act, 2011 [Pub. L. 112-10, division B, 125 Stat. 102, 103, April

15, 2011] (2011 Appropriations Act), makes funding available for DOT and other Federal agencies during Fiscal Year (FY) 2011 under the authority and conditions specified in the 2010 Appropriations Act.

Section 6901 of the 2007 Appropriations Act also provided that simultaneous and comparable authority to operate within Mexico must be made available to U.S. motor carriers. Further, before the required pilot program may begin, in accordance with section 6901(b)(1), the Department's OIG must submit a report to Congress verifying that DOT has complied with the requirements of section 350(a). 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(c) 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 of the 2007 Appropriations Act requires that DOT provide an opportunity for public comment by publishing in the **Federal Register** information on the PASAs conducted. DOT must also publish, for comment, the standards that will be used to evaluate the pilot program. The Agency must also provide a list of Federal motor carrier safety laws and regulations, including commercial driver's license (CDL) requirements, for which the Secretary 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 later in this notice.

## Background

### Introduction

Before 1982, Mexico- and Canada-domiciled motor carriers could apply to the Interstate Commerce Commission (ICC), a former independent Federal agency responsible for regulating, *inter alia*, motor carrier operations and safety, 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 motor carriers from those nations enjoyed in this

country, the Bus Regulatory Reform Act of 1982 [Pub. L. 97-261, 96 Stat. 2201, September 20, 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 Mexico-domiciled motor carriers are allowed to operate only within the border commercial zones typically extending up to 25 to 50 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, which was 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 border commercial zones. On January 1, 1994, President Clinton modified the moratorium and the ICC began accepting applications from Mexico-domiciled passenger motor carriers to conduct international charter and tour bus operations in the United States (Memorandum for the Secretary of Transportation, "Determination Under the Bus Regulatory Reform Act of 1982," 59 FR 653, January 6, 1994). On December 13, 1995, the ICC published a rule and a revised application form for the processing of Mexico-domiciled property motor carrier applications (Form OP-1(MX)) (60 FR 63981). The ICC rule anticipated the implementation of the second phase of NAFTA, providing Mexico-domiciled motor carriers of property 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 Mexico-domiciled long-haul motor carrier operations.

In 1998, Mexico filed a claim against the United States under NAFTA dispute resolution provisions alleging that the United States' refusal to grant authority to Mexico-domiciled trucking companies constituted a breach of the United States' NAFTA obligations. On

February 6, 2001, the arbitration panel, convened pursuant to NAFTA dispute resolution provisions, issued its final report and ruled in Mexico's favor, concluding that the United States was in breach of its obligations and that 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 arbitration panel noted that the United States could establish a safety oversight regime to ensure the safety of Mexico-domiciled motor carriers entering the United States, but that the safety oversight regime could not be discriminatory and must be justified by safety data.

After President Bush announced the intent to resume the process for opening the border in 2001, Congress enacted section 350, as discussed in the "Legal Basis" section of this notice. FMCSA took various steps to comply with section 350, including the issuance of new regulations applicable to Mexico-domiciled long-haul motor carriers (67 FR 12702, 12758, March 19, 2002). These regulations were challenged on environmental grounds in litigation that was ultimately decided in FMCSA's favor by the U.S. Supreme Court (*Department of Transportation v. Public Citizen*, 541 U.S. 752 (2004)).

In November 2002, then Secretary Norman Mineta certified, as required by section 350(c)(2), that authorizing Mexico-domiciled motor carrier operations beyond the border commercial zones did not pose an unacceptable safety risk to the American public. Later that month, President Bush 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. These reports are available in the docket for this notice.

Former Secretary Mary Peters and Mexico's former Secretary of the 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 the conditions imposed by section 6901 of the 2007 Appropriations Act, as discussed in the "Legal Basis" section of this notice. The demonstration project was initially expected to last 1 year (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 49 U.S.C. 31315(c)(2)(A) (73 FR 45796) after Secretaries Peters and Téllez exchanged letters on the extension.

On March 11, 2009, President Obama signed into law the 2009 Appropriations Act. Section 136 of the 2009 Appropriations Act 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). In light of the termination, two consolidated lawsuits challenging the project and pending before the U.S. Court of Appeals for the Ninth Circuit were dismissed as moot.

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 motor 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 program, and to address the legitimate safety concerns of Congress while fulfilling our obligations under NAFTA. Secretary Ray LaHood met with numerous members of

Congress to solicit their input. FMCSA tasked its 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 motor carriers beyond the border commercial zones. The MCSAC final report on this tasking is available on the FMCSA MCSAC Web page 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.

President Obama signed the 2010 Appropriations Act on December 16, 2009, which contained no prohibitions against using FY 2010 funds to conduct a cross border long-haul program (unlike the 2009 Appropriations Act) and retained requirements specified in section 350 and section 6901 of the 2007 Appropriations Act.

On April 12, 2010, Secretary LaHood met with Mexico's former Secretary of SCT, 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.

#### *The Initial Concept Document and the Preliminary Agreement*

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. On the same day, the Department posted the concept documents on its Web site for public viewing (<http://www.dot.gov/affairs/2011/dot0111.html>). The initial concept document was the starting point for renewed negotiations with Mexico; and the United States commenced discussions with the Government of Mexico on January 18, 2011. The preliminary agreement between DOT and SCT is reflected in the program description and described 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 issues between the United States and Mexico.

On April 13, 2011, FMCSA published notice of the pilot program on NAFTA Long-Haul Trucking Provisions in the **Federal Register** (76 FR 20807) and the comment period ended May 13, 2011.

The Agency explained that the pilot program will allow Mexico-domiciled motor carriers to operate throughout the United States for up to 3 years, and that U.S.-domiciled motor carriers will be granted reciprocal rights to operate in Mexico for the same period.

Participating Mexico-domiciled motor carriers and drivers must comply with all applicable U.S. motor carrier safety laws and regulations, as well as other applicable U.S. laws and regulations, *inter alia*, those concerned with customs, immigration, vehicle emissions, employment, vehicle registration, and vehicle/fuel taxation.

The Agency explained that the safety performance of the participating motor carriers will be tracked closely by FMCSA and its State partners, a Federal Advisory Committee Act group, and the OIG. The Agency will monitor and evaluate the data from the pilot program as a test of the granting of authority to Mexico-domiciled motor carriers to conduct long-haul operations in the United States. FMCSA indicated that it anticipated participating motor carriers may be able to convert their provisional status under the pilot program to "permanent" authority under the pilot program after operating 18 months and successfully completing a compliance review (CR). This "permanent" authority under the pilot program, in turn, may be converted into standard permanent authority upon completion or termination of the pilot program. It should be noted that the Agency will be maintaining its oversight strategies and resources that have been reviewed by the OIG during the previous demonstration project and the OIG's other reviews of the Agency's compliance with section 350. The April 13th notice outlined how the Agency would maintain those strategies and augment them with new strategies to address stakeholder input. This notice responds to comments on those previous and augmented strategies.

As indicated in the April 13, 2011, **Federal Register** notice, this pilot program will not include operations that involve the transport of placarded amounts of hazardous materials or passengers. As noted in the "Summary" section of this notice, Mexico's regulations identify other types of CMV operations and services as ineligible for authority to operate into Mexico. These include the transportation of oversized

or overweight goods, industrial cranes, vehicle towing or rescue, or packaging and courier services. Mexico is allowing U.S. motor carriers of international freight to operate into Mexico. In order to comply with the reciprocity requirements of section 6901(a)(3) of the 2007 Appropriations Act, the United States will not issue authority to Mexico-domiciled motor carriers to transport oversized or overweight goods, industrial cranes, or operate vehicle towing, rescue, or packaging and courier services in this pilot program.

#### Discussion of Comments

The notice and comment process for all pilot programs is required by statute (49 U.S.C. 31315) with the intent of providing all interested parties with the opportunity to review information published by the Agency and to comment on the specific details about any proposed pilot program. As of June 1, 2011, FMCSA received 2,254 comments or docket submissions in response to the April 13, 2011, notice. Over 1,000 comments were submitted by individuals on behalf of the International Brotherhood of Teamsters (Teamsters).

There were three recurring submissions from individuals that made up the majority of the comments. These commenters expressed concerns about the violence in Mexico and indicated that the pilot program will negatively impact U.S. jobs at a time when unemployment is high. Approximately 1,000 of the comments were submissions by individuals suggesting that the Agency should abandon the idea of a pilot program. Generally, these comments did not include information concerning the technical details of the Agency's proposal (e.g., specific safety oversight procedures or processes), economic or legal aspects of the pilot program, or any other information supporting the view that the program should not be pursued. While FMCSA is not responding to these comments individually, the Agency believes that its responses to the substantive comments received address the brief comments submitted by these individuals.

Moreover, the purpose of this pilot program is to test the granting of authority to Mexico-domiciled motor carriers to conduct long-haul operation in the United States, in order to evaluate the ability of Mexico-domiciled motor carriers to operate safely in the United States beyond the border commercial zones as part of DOT's implementation of the NAFTA land transportation provisions. While FMCSA acknowledges these commenters'

concerns, the issues are beyond the scope of the pilot project in that they do not relate to the safe operation of CMVs by Mexico-domiciled motor carriers or compliance with U.S. motor carrier safety regulations. Therefore, these comments will not be addressed in this notice.

The remaining comments were from members of Congress, companies, organizations, associations, and individuals expressing their views on specific details about the pilot program.

The Agency's announcement of its intent to proceed with the program is based on its consideration of all data and information currently available, including information submitted by the commenters.

The Agency received substantive comments from: Advocates for Highway and Auto Safety (Advocates); Teamsters; the American Trucking Associations (ATA); California Trucking Association (CTA); the Owner-Operator Independent Drivers Association (OOIDA); International Registration Plan (IRP), the Border Trade Alliance (BTA), the American Association for Justice (AAJ), Werner Enterprises, and the Truck Safety Coalition (Coalition)—a partnership with Citizens for Reliable and Safe Highways and Parents Against Tired Truckers. In addition, comments were received from several U.S. Representatives and Senators.

#### General Support for the Pilot Program

Many commenters supported the pilot program and recognized its importance in meeting U.S. obligations under NAFTA. U.S. companies and their representative associations that have been negatively impacted by the tariffs imposed by the Government of Mexico as a result of the termination of the previous demonstration project also expressed their strong support for the program. Companies negatively impacted by the tariffs included Oceanspray, Kraft Foods, Con Agra, Campbell Soup Company, American Frozen Foods Institute, National Cattlemen's Beef Association, National Potato Council, North American Equipment Dealers Association, the Grocery Manufacturers Association, Association of Food, Beverage and Consumer Products Companies, Distilled Spirits Council of the United States, Fresh Produce Association of the Americas, Mars, National Association of State Departments of Agriculture, the Snack Food Association, and Tysons Food. These commenters expressed their support for the pilot program as the means to remove the tariffs that have negatively impacted their industries.

Supporters of the pilot program include U.S. Representatives Mike Thompson and Reid Ribble. Representative Thompson stated,

The proposal the Administration crafted includes important protections to ensure trucks crossing the border are operating safely on our roadways and under our environmental standards, allowing us to monitor and inspect vehicles before they are approved for cross-border trucking operations. I believe implementation of this revised pilot program provides a clear path toward the elimination of these harmful retaliatory tariffs and normalization of trade between our two countries, while also ensuring the integrity of our roadways.

Thirteen commenters—including the U.S. Apple Association, the National Council of Farmer Cooperatives and the National Association of State Departments of Agriculture—referenced the Congressional Research Service and/or OIG reports that concluded during the previous 18-month pilot program, Mexican trucks were as safe as—if not safer than—their U.S. counterparts and were subject to far more inspections.

U.S. Representative Doc Hastings and 29 congressional colleagues provided a letter in support of the pilot program, stating,

As you know, Mexico imposed \$2.6 billion in retaliatory tariffs on 99 U.S. agricultural and manufacturing products more than two years ago, after the United States halted a cross-border trucking program that was designed to bring the United States into compliance with our international obligations in a matter consistent with U.S. law. Since then, Mexico has rotated the tariffs to cover additional products, and Mexican officials have made clear they are prepared to do so yet again.

These tariffs have already cost tens of thousands of U.S. jobs and over \$4 billion to U.S. job creators, at a time when our economy is already struggling. It is imperative for U.S. workers and exporters that these tariffs be eliminated. Mexico has agreed to suspend fifty percent of the tariffs across the board once the new cross-border trucking pilot program is officially instituted and remaining tariffs once the first permit is issued under the program. The success of this pilot program is, thus, critical for U.S. workers and exporters—and for U.S. economic recovery.

This letter concluded with the statement that,

In short, we have long believed that the United States can strengthen its economy by resolving this major issue with one of our largest trading partners—in a manner that fully ensures the safety of U.S. highways. This pilot program and its substantial safeguards are prudent and responsible. We strongly encourage you to move forward with finalizing and implementing this plan as soon as possible. These tariffs have done irreparable damage to our local economies, and U.S. workers, farmers, manufacturers,

and other exporters simply cannot afford any further delays.

The United States-Mexico Chamber of Commerce stated,

In 2010, Mexico and the United States enjoyed a nearly \$400 billion trade relationship, and 70 percent of it travels by truck in an antiquated transportation system that requires three trucks and three drivers to do the job of one. This not only bloats producer and consumer prices by hundreds of millions of dollars a year. It also fails to fulfill the benefits (particularly lower transportation costs) that accrue from U.S.-Mexico proximity—a key NAFTA advantage. Doing so now clearly would boost U.S. and North American competitiveness against economic rivals and result in still more jobs.

The Cato Institute advised,

The failure of Congress to allow implementation of the NAFTA trucking provisions has proven costly to the United States in three important ways.

First, U.S. failure to comply has deprived our economy of the efficiencies of moving goods across our mutual border at lower cost. With the ban in place, trucks approaching the border are required to unload their cargo into warehouses in so-called commercial zones within 25 miles of the border, only to have that cargo reloaded onto short-haul vehicles and then onto domestic trucks for final delivery. This inefficient system causes delays, increased pollution and added costs at busy border crossings such as Calexico East; San Ysidro; Nogales, Ariz.; and Laredo, Texas. Because more than 70 percent of U.S. trade with Mexico travels by truck, the ban on cross-border trucking imposes an additional \$200 million to \$400 million in transportation costs each year, according to the U.S. Department of Transportation.

Second, failure to comply has exposed U.S. exporters to perfectly legal sanctions imposed by the Mexican government. Under the provisions of NAFTA, and after waiting patiently for more than a decade, the Mexican government imposed sanctions in 2009 on more than \$2.4 billion in U.S. exports affect 100 products, from Washington apples to Iowa pork. The sanctions would be lifted in two stages as the U.S. government implements the proposed program to comply with Annex I.

Third, failure to comply has compromised the U.S. government's reputation as a good citizen of the global trading system. Simply put, the U.S. government has failed to keep its word to our Mexican neighbors. Our government has been in flagrant violation of a major trade agreement for more than 15 years. This breach of trust has undermined the U.S. government's standing to challenge other governments, from Mexico to China to the European Union, who may also be in violation of various trade agreements. The Obama administration's promise to more vigorously "enforce" our rights in the World Trade Organization and other agreements will lack credibility as long as the U.S. government fails to comply with such clear commitments as the trucking provisions of NAFTA.

For all these reasons, the U.S. government should act as quickly and as thoroughly as

possible to implement the proposed regulations to bring our nation into compliance with our mutually beneficial agreement with our Mexican neighbors on cross-border trucking.

#### *General Opposition to the Pilot Program*

Most of the individual commenters to the April 13 notice expressed concerns about the following:

(1) The U.S. Government's funding of the electronic monitoring devices for participating Mexico-domiciled motor carriers;

(2) Mexico's standards for CDLs;

(3) The accuracy and completeness of Mexico's driver records;

(4) Compliance with hours-of-service requirements; and

(5) Comparable access for U.S. motor carriers.

U.S. Senator John D. Rockefeller and U.S. Representative Peter A. DeFazio both noted the economic impacts of NAFTA. Representative DeFazio expressed concern that "the Administration is not launching a pilot program, but rather starting the full liberalization of cross-border trucking without having fully addressed the concerns raised by members of Congress surrounding safety, security, and job impacts that will necessarily arise." Representative DeFazio further suggested "that the U.S. should renegotiate U.S. NAFTA Annex I (I-U-21) \* \* \* thus eliminat[ing] the requirement to open our borders to Mexican trucks."

U.S. Representative Bob Filner and U.S. Senator Mark Pryor also expressed concerns about the pilot program. Representative Filner's concerns included traffic congestion at our land port-of-entry and the impact on border wait times. He stated that, "Many of my constituents already have to wait in lines several hours each day to cross the border \* \* \*. We simply do not have enough Border Patrol and Immigration and Customs Enforcement agents at the border to deal with the existing traffic or the heavy burden of the proposed program."

U.S. Representative Duncan Hunter, Jr. and 43 additional members of Congress co-signed a letter to the Secretary communicating their concerns about safety, the costs of electronic monitoring devices, and violence in Mexico. A copy of each congressional letter is available in the docket for this notice.

#### **1. Operating Authority Under the Pilot Program**

The Coalition stated that the pilot program participants should not be granted permanent authority before

completion of the pilot program and evaluation of the results. The Coalition stated that, "Granting permanent operating authority before the Pilot Program is completed undermines the purpose of the experiment and data collection and puts the public at serious risk."

Representative DeFazio questioned how the Agency could comply with 49 U.S.C. 31315, which requires DOT to immediately revoke the participation of any motor carrier or driver who fails to comply with the terms and conditions of the pilot program, if the Agency is granting permanent authority.

OOIDA challenged the Agency's statutory authority for issuing operating authority. OOIDA averred that 49 U.S.C. 13902 precludes FMCSA from accepting compliance with certain Mexican laws and regulations in lieu of compliance with U.S. laws and regulations. OOIDA stated, "FMCSA is simply not authorized to issue operating authority to any motor carrier (U.S. or Mexican) unless that carrier agrees to comply with applicable U.S. statutes and regulations." To support its position, OOIDA quoted a statement in the November 27, 2002, Memorandum of the President for the Secretary of Transportation, "Determination Under the Interstate Commerce Commission Termination Act of 1995," (65 FR 71795, November 27, 2002), which terminated a moratorium on issuing operating authority to Mexico-domiciled motor carriers:

Motor carriers domiciled in Mexico operating in the United States will be subject to the same Federal and State laws, regulations, and procedures that apply to carriers domiciled in the United States.

Advocates questioned whether FMCSA will be granting temporary operating authority to any participating Mexico-domiciled long-haul motor carriers before they are accepted into the pilot program. Advocates also stated that it opposes the granting of any operating authority, including temporary authority, in advance of FMCSA's publication of a notice in the **Federal Register** describing its data and information on completed PASAs and its analysis of public comments in response to the notice concerning the completed PASAs. Advocates also requested "that the agency publish all the PASAs of all the participating motor carriers in advance of the start of the Pilot Program and before any motor carriers are granted temporary operating authority."

*FMCSA Response:* FMCSA's Authority to Issue Operating Authority. Title 49 U.S.C. 13902(a) directs FMCSA

to grant operating authority to motor carriers that comply with all applicable safety regulations and financial responsibility requirements. As discussed in the "Legal Basis" section above, section 6901(a) of the 2007 Appropriations Act requires that before FMCSA may obligate or expend any funds to grant authority for Mexico-domiciled motor carriers to engage in cross-border long-haul operations, it is required to first test granting such authority through a pilot program that meets the standards of 49 U.S.C. 31315(c). By expressly providing for pilot programs in 49 U.S.C. 31315(c), and requiring FMCSA to first test the granting of long-haul authority to Mexico-domiciled motor carriers through a pilot program, Congress clearly contemplated that motor carriers participating in a test meeting the conditions of section 31315(c) would lawfully be granted operating authority under 49 U.S.C. 13902(a). Furthermore, the pilot program satisfies the fundamental statutory standard of equivalent safety protection and all other pilot program requirements. The safety-equivalence standard in section 31315(c) requires that the pilot program be designed to achieve a safety level equal to that prevailing under existing Federal Motor Carrier Safety Regulations (FMCSRs). The pilot program does not relax U.S. regulations for participants. Rather, it simply implements the presidential order lifting geographic limitations on cross-border trucking for a limited number of Mexico-domiciled motor carriers and imposes additional layers of safety monitoring upon those motor carriers. Existing Federal regulations already recognize and accept the Mexican Licencia Federal de Conductor (LFC) as equivalent to the U.S. CDL, (§ 383.23(b) and footnote) and pursuant to these regulations, thousands of LFC holders have driven Mexican trucks into the United States since their adoption in 1992 and continue to do so today. In all other significant respects, U.S. requirements apply with full force to participants in the pilot program. The Agency, by showing that the pilot program satisfies the standard of equivalent safety protection imposed by 49 U.S.C. 31315(c), satisfies the requirements of 49 U.S.C. 13902(a).

*Permanent Operating Authority under the Pilot Program.* Some commenters seemed to misapprehend the reference to "pilot program permanent authority" in the April 13, 2011 notice. That authority is not the same as standard permanent authority; will not continue after the expiration of the pilot program

(unless converted into standard permanent authority); and may be revoked at any time if the operator fails to comply with the terms and conditions of the pilot program.

All operating authority granted under the pilot program will be subject to the terms and conditions of the pilot program. Under the pilot program, participating motor carriers will have the opportunity to operate under three successive stages of monitoring. Stage 1 will begin when the motor carrier is issued a provisional operating authority. The motor carrier's vehicles and drivers approved for long-haul transportation will 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 will also conduct an evaluation of the motor carrier's performance during Stage 1.

Mexico-domiciled motor carriers may be permitted to proceed to Stage 2 of the pilot program after FMCSA completes an evaluation of the motor carrier's performance in Stage 1. During Stage 2, the motor carrier's vehicles and drivers participating in the pilot program will 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 will be monitored to assure the motor carrier is operating in a safe manner. Within 18 months after a Mexico-domiciled motor carrier is issued provisional operating authority, FMCSA will conduct a CR 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 provisional authority for at least 18 months, the provisional operating authority will become permanent, moving the motor carrier into Stage 3.

Stage 3 of the pilot program includes participating Mexico-domiciled motor carriers that have successfully operated for an 18-month monitoring period, have a satisfactory safety rating from a CR, and have no pending enforcement or safety improvement actions. Motor carriers that advance to Stage 3 of the pilot program will operate under permanent operating authority under, and fully subject to the requirements of, the pilot program. Granting this permanent operating authority under the pilot program does not restrict the Agency's authority to remove from the program any motor carrier that fails to comply with terms and conditions of the pilot program. Under 49 U.S.C. 31315, FMCSA may revoke participation in the pilot program of a

motor carrier, CMV, or driver for failure to comply with the terms and conditions of the pilot program.

The successive stages in the pilot program are intended to be consistent with the Agency's regulations promulgated in 2002 related to Mexico-domiciled motor carriers operating beyond the border commercial zones (49 CFR part 365, subpart E). Those regulations provide for a Mexico-domiciled motor carrier to be initially granted provisional operating authority and be subject to increased monitoring. The authority, by definition, is provisional because it will be revoked if the motor carrier is not assigned a satisfactory safety rating following a CR conducted during an 18-month safety monitoring period established in the regulations. Under these regulations, if, at the end of 18-months of monitoring the motor carrier's most recent safety rating is satisfactory and the motor carrier does not have any pending enforcement or safety improvement actions, the Mexico-domiciled motor carrier's provisional operating authority becomes permanent. However, this authority is still subject to revocation as detailed above. Section 6901 requires FMCSA to first test the granting of operating authority for long-haul operation by Mexico-domiciled motor carriers through a pilot program. An important component and improvement of this pilot program is that by using the progressive stages of monitoring, the Agency is able to test the full range of its regulations while effectively monitoring Mexico-domiciled motor carriers to ensure the safety of long-haul operations and that such operations are conducted in compliance with all applicable laws and regulations.

In accordance with section 6901(c), within 60 days after the conclusion of the pilot program, the OIG is required to review the program and submit to Congress a final report addressing whether FMCSA has established sufficient mechanisms to determine whether the pilot program is having any adverse effects on motor carrier safety, and whether Federal and State monitoring and enforcement activities are sufficient to ensure that participants in the pilot program are in compliance with all applicable laws and regulations. Only at the conclusion of the pilot program will Mexico-domiciled motor carriers that participated in the pilot program and advanced to the Stage 3 permanent authority in the pilot program be eligible to convert their pilot program permanent authority to standard permanent authority. FMCSA has not yet developed the procedures for such conversions, but anticipates the

procedures will establish an administrative process that would occur once the pilot program ends.

*Granting of Provisional Operating Authority.* The Agency may have caused some confusion in the April 13, 2011, notice when it stated that "the Agency will publish a summary of the application as a provisional grant of authority in the FMCSA Register." FMCSA will review and act on applications for authority in the pilot program in accordance with applicable regulations. The Agency's rules governing applications for authority are codified in 49 CFR part 365. FMCSA is required under its regulations to publish a summary of each application for motor carrier operating authority, regardless of the applicant's country of domicile, as a preliminary grant of operating authority for public notice in the FMCSA Register (49 CFR 365.109(b) and 365.507(d)). For prospective pilot program participants, such publication will occur only after the motor carrier successfully completes the PASA and FMCSA approves the application. Such publication of the application as a preliminary grant of authority in the FMCSA Register is not an issuance of temporary authority, but a notice to the public to permit interested parties wishing to oppose the authority to submit a protest to FMCSA. A preliminary grant of authority cannot become effective or active operating authority for a minimum of 10 days after publication. If a motor carrier successfully completes the PASA and FMCSA approves its application, the Agency will publish a summary of the application as a preliminary grant of authority in the FMCSA Register at: <http://li-public.fmcsa.dot.gov/LIVIEW/pkg.html.prc.limain>. To review these notices, select "FMCSA Register" from the pull down menu.

The FMCSA emphasizes that the public has the opportunity to comment in response to the FMCSA Register on every operating authority application that the Agency proposes to grant and that motor carriers may not operate during the comment period. Any member of the public may protest a motor carrier's application on the grounds that the motor carrier is not fit, willing, or able to provide the transportation services for which it has requested approval. FMCSA must consider all protests before determining whether to grant provisional operating authority to the motor carrier. The Agency's regulations regarding protests, codified at 49 CFR part 365 subpart B, set forth the procedures for protesting operating authority requests, including

requests filed by U.S.- and Canada-domiciled motor carriers.

As required by section 6901(b)(2)(B)(i) of the 2007 Appropriations Act, 2007, FMCSA will also publish in the **Federal Register**, and solicit comment on comprehensive data and information relating to the PASAs of motor carriers domiciled in Mexico that are granted authority in the pilot program to operate beyond the border commercial zones. Therefore, the public has two opportunities to comment on Mexico-domiciled motor carriers' applications: (1) In response to the application summary information posted on the FMCSA Register, and in response to the **Federal Register** notice required by section 6901(b)(2)(B)(i) of the 2007 Appropriations Act. Provisional authority will not be granted until these processes and their respective notice periods are complete.

While FMCSA will publish information on the results of the PASA in the **Federal Register** for public comment for each motor carrier before granting the motor carrier provisional operating authority, FMCSA is not able to publish the results of the PASAs for all motor carriers that may ultimately apply to participate in the pilot program before the program begins. FMCSA will have no way of knowing at the beginning of the pilot program all of the motor carriers that may decide to apply to participate in the program during its three year duration and, therefore, could not publish the results of all PASAs before beginning the pilot program. Additional motor carriers that apply to participate in the pilot program after it begins will also be subject to PASAs, and the results of those PASAs will be published in the **Federal Register** before any such motor carrier is granted provisional operating authority.

## 2. Pilot Program Improperly Exempts Mexico-Domiciled Motor Carriers From Safety Laws and Regulations

OOIDA contends that accepting Mexican standards and regulations in lieu of U.S. statutes and regulations results in an exemption, and that FMCSA has failed to follow its authority and regulations for exemptions. OOIDA stated that, "Excusing compliance with U.S. regulations for the duration of its pilot program certainly qualifies as 'temporary regulatory relief' for a person or class of persons subject to those regulations." OOIDA asserts that this, therefore, requires the Agency to follow the procedures for granting exemptions from U.S. regulations and deprives interested parties procedural protections.

*FMCSA Response:* This pilot program does not provide Mexico-domiciled motor carriers with exemptions from any statutory requirements or any of the Agency's regulations or make them eligible for any existing exemption. To the contrary, motor carriers participating in the program will be subject to existing statutory requirements and regulations, including the regulations mandating the PASA (49 CFR 365.507(c)). Additionally, because no exemptions from or new approaches to statutory requirements and safety regulations are being employed in the pilot program, the level of safety oversight that will be achieved in the program is the same or greater than would otherwise be achieved if Mexico-domiciled motor carriers were granted authority to operate beyond the border commercial zones outside of the context of a pilot program.

As to the issue of driver's license equivalency, the Agency has long recognized Mexico's LFC as equivalent to the CDL issued by U.S. State driver licensing agencies that follow the Federal standards under 49 CFR Parts 383 and 384. The Mexican LFC is recognized as a valid substitute for the CDL and is the basis for a signed international agreement under which the United States and Mexico have recognized each other's commercial driver's licenses, a decision that was upheld on judicial review (*Int'l Brotherhood of Teamsters v. Peña*, 17 F.3rd 1478 (DC Cir. 1994)). The Agency has also long recognized Mexico's physical qualification standards. These are not exemptions, but well-established alternative means of meeting U.S. standards that pre-date the pilot program. Indeed, every day, thousands of Mexican drivers safely operate Mexico-domiciled trucks in the United States under these rules.

Neither the Government of Mexico nor any Mexico-domiciled motor carrier has requested that FMCSA consider granting an exemption from U.S. safety requirements for participating motor carriers, and the Agency is not seeking public comment on any forms of regulatory relief. The continued honoring of reciprocity agreements concerning the acceptance of the Mexican LFC and the medical certification should not be construed as granting regulatory relief. Nor is the allowance of specimen collections on the Mexican side of the border, in accordance with U.S. requirements, a form of regulatory relief.

All tests must be performed in accordance with the Department's controlled substances and alcohol testing regulations (49 CFR part 40),

which require that specimens be processed at U.S. laboratories certified to conduct such tests.

### 3. Equivalency of United States-Mexico Laws and Regulations Governing Safety

Advocates, Teamsters, the Coalition and OOIDA all challenged the equivalency of U.S. and Mexican safety laws. Advocates asserted that "[r]egulatory differences that affect vehicle operation must be reconciled before commencement of Pilot Program." Advocates questioned the equivalence of CDLs, disqualification violations, and drug testing.

Several commenters requested clarification of the Agency's system to monitor performance of Mexico-licensed drivers and expressed concerns about the accuracy and completeness of the Mexican LFC and Mexican State license information.

Teamsters also noted that there are no drug testing laboratories in Mexico that are certified by the U.S. Department of Health and Human Services. OOIDA and Teamsters both requested additional information regarding the training regime for Mexican personnel to follow U.S. procedures for drug and alcohol testing collection and chain of custody.

Teamsters noted that the medical qualification standard for vision is different in Mexico than in the United States, as Mexico requires red-vision only. OOIDA encouraged the Agency to provide additional information on the Mexican medical certification requirements.

Multiple commenters asked how information about violations in personal vehicles in Mexico would be obtained and used by FMCSA.

OOIDA and Advocates both believe that FMCSA has an obligation to post more information about the equivalent laws and regulations and to provide copies of the Mexican regulations in English.

**FMCSA Response: CDLs.** As noted above, in 1991, the Secretary and his counterpart in Mexico entered into an agreement on the matter of driver license reciprocity. The agreement is in the form of a memorandum of understanding (MOU) and was reproduced as Appendix A to a final rule issued in 1992 by FMCSA's predecessor agency, the Federal Highway Administration (FHWA). (*Commercial Driver's License Reciprocity with Mexico*, 57 FR 31454 (July 16, 1992)). The primary purpose of the MOU was to establish reciprocal recognition of the CDL issued by the States to U.S. operators and the LFC issued by the government of the United

Mexican States (*i.e.*, by the national government of Mexico, not by the individual Mexican states). In light of the agreement, the FHWA determined that an LFC meets the standards contained in 49 CFR part 383 for a CDL. (49 CFR 383.23(b)(1) and footnote) FHWA also stated in the July 16, 1992 final rule:

It should be noted that Mexican drivers must be medically examined every 2 years to receive and retain the *Licencia Federal de Conductor*; no separate medical card [certificate] is required as in the United States for drivers in interstate commerce. As the *Licencia Federal de Conductor* cannot be issued to or kept by any driver who does not pass stringent physical exams, the *Licencia Federal de Conductor* itself is evidence that the driver has met medical standards as required by the United States. Therefore, Mexican drivers with a *Licencia Federal de Conductor* do not need to possess a medical card while driving a CMV in the United States.

(57 FR 31455)

The Agency's determination that a Mexico-domiciled driver with an LFC does not need to possess a separate medical certificate is based on the fact that the medical examination necessary to obtain the LFC meets the standards for an examination by a medical examiner in accordance with FMCSA regulations, and would therefore meet the requirements of 49 U.S.C. 31136(a)(3).

While FMCSA recognizes that U.S. CDL regulations have been amended since 1991, those changes relate almost exclusively to the types of offenses that would result in disqualification of licenses and to the administration of the licensing program (*i.e.*, how information is reported and shared among the States). There have been no major changes to the U.S. knowledge and skills testing until issuance of a May 9, 2011 final rule implementing the CDL Learner's Permit processes titled, "Commercial Driver's License Testing and Commercial Learner's Permits Testing." (76 FR 26854). States have 3 years to implement the provisions of that rule. The United States will address the changes in U.S. CDL regulations with Mexico during the updating of the 1991 CDL MOU that is currently underway.

With respect to the changes relating to disqualifying offenses (49 CFR part 383, subpart D), FMCSA is not relying on Mexico's disqualifying offenses. During the PASA, FMCSA will review violation information from a driver's U.S. record, LFC record, and Mexican State license record to determine if the driver is qualified to drive in the United States, based on the current disqualification

requirements for a U.S. CDL holder. FMCSA will also review Mexican State license records for violations in a personal vehicle that would result in suspension or revocation in the United States. After the PASA, these sets of records will be reviewed annually by FMCSA to ensure continued compliance.

FMCSA does, however, recognize the concern about the on-going acceptance of the existing CDL MOU. In the Agency's efforts to update the MOU, on February 16, 2011, a delegation of FMCSA and DOT representatives toured SCT's commercial driver's licensing office in Mexico City, Distrito Federal, Mexico. The review of the commercial driver's licensing office showed that the LFC is issued in a manner similar to that employed by U.S. State commercial drivers licensing offices. Applicants are required to present documentation to verify their identity and place of residence. Additionally, applicants are required to provide documentation that they have passed the required psychophysical examination. The drivers licensing office verifies this information by accessing the SCT's medical units' database. Applicants are also required to provide a training certificate from an SCT-certified training school.

On February 17, 2011, a delegation of FMCSA, CVSA, and the American Association of Motor Vehicle Administrators (AAMVA) representatives toured the commercial driver's licensing office in Monterrey, Nuevo Leon, Mexico. The delegation observed the same processes as were seen in Mexico City. In addition, the delegation toured an SCT-certified training school in Monterrey. The tour included a description of the classroom, simulator, maintenance shop, and behind the wheel training. The training school operator described the driver testing procedures.

FMCSA will be undertaking additional site visits to Mexican driver training, testing, and licensing locations prior to beginning the pilot program to review Mexico's on-going compliance with the terms of the current MOU. Reports of these visits will be posted on the FMCSA pilot program Web site at <http://www.fmcsa.dot.gov>.

FMCSA's statement that Mexico-domiciled drivers and motor carriers will be subject to the same standards as U.S. drivers and motor carriers does not mean that U.S. standards must be applied to Mexico-domiciled drivers and motor carriers while operating in Mexico. The Agency does not have authority to apply U.S. standards to driver or motor carrier actions occurring in Mexico, *i.e.*, it has no extraterritorial

jurisdiction to enforce FMCSA rules. If Mexico chooses to suspend or revoke a driver's LFC for violations committed in Mexico, the Licencia Federal Information System (LIFIS) will reflect that fact and FMCSA will refuse to let the driver operate in this country.

All drivers operating CMVs in the United States are subject to the same driver disqualification rules, regardless of the jurisdiction that issued the driver's license. The driver disqualification rules apply to driving privileges in the United States. Any convictions for disqualifying offenses that occur in the United States will result in the driver being disqualified from operating a CMV for the period of time prescribed in the FMCSRs.

In Mexico, in order to obtain the LFC, a driver must meet the requirements established by the Ley de Caminos, Puentes y Autotransporte Federal (Roads, Bridges and Federal Motor Carrier Transportation Act) Article 36, and Reglamento de Autotransporte Federal y Servicios Auxiliares (Federal Motor Carrier Transportation Act) Article 89, which state that a Mexican driver must pass the medical examination performed by Mexico's SCT, Directorship General of Protection and Prevention Medicine in Transportation (DGPMPPT). While there is currently no government oversight of the proficiency and knowledge of medical examiners in the United States, the medical examinations in Mexico are conducted by government doctors or government-approved doctors instead of the private physicians who perform the examination on U.S. drivers.

The Agency emphasizes that drivers for Mexico-domiciled motor carriers have been operating within the border commercial zones for years with the medical certification provided as part of the LFC, and the Agency is not aware of any safety problems that have arisen as a result.

In response to the questions regarding how violations in personal vehicles will be handled and the quality of the Mexican databases, FMCSA notes that it and its Federal and State partners performed 254,397 checks of LFC holders in FY 2010. These LFC checks resulted in detection of a valid license 250,640 times, expired licenses 3,713 times, and disqualified licenses 44 times. While the Mexican State driving records systems vary significantly, FMCSA will be working with the applicant motor carriers, drivers, and SCT to secure valid copies of the State driving records for review.

FMCSA has satisfied the requirement of section 350(c)(1)(G) concerning an accessible database containing

sufficiently comprehensive data to allow safety monitoring of motor carriers operating beyond the border commercial zones and their drivers. Looking specifically at driver monitoring, in 2002 FMCSA established a system known as the Foreign Convictions and Withdrawals Database (FCWD), which serves as the repository of the U.S. conviction history on Mexican CMV drivers. The system allows FMCSA to disqualify such drivers from operating in the United States if they are convicted of disqualifying offenses listed in the FMCSRs.

The FCWD is integrated into the Agency's gateway to the Commercial Driver's License Information System (CDLIS), allowing enforcement personnel performing a Mexican CDLIS-check to simultaneously query both the Mexican LIFIS and the FCWD. The response is a consolidated driver U.S./Mexican record showing the driver's status from the two countries' systems.

The States also have the capability to forward U.S. convictions of LFC holders, and other drivers from Mexico, to the FCWD via CDLIS. To accomplish this, the States implemented changes to their information systems and tested their ability to make a status/history inquiry and forward a conviction to the FCWD. All States except Oregon, (which does not electronically transmit any convictions) and the District of Columbia (which does not electronically transmit convictions of Mexico-domiciled CDL drivers) have successfully tested electronically forwarding convictions on Mexico-domiciled CMV drivers. Both jurisdictions, however, can manually transmit the information to FMCSA for uploading into the system.

As of May 31, 2011, the border States transmitted 46,065 convictions to the FCWD between 2002 and 2011. This averages 5,118 per year. Of that number, 41,118 were transmitted electronically and 4,947 were manually entered into the system. It should be noted that only 242 of these convictions were for major traffic offenses (as listed in 49 CFR 383.51(b)), and 1,709 were for serious traffic offenses (as listed in 49 CFR 383.51(c)). In comparison, between May 2010 and May 2011, the States transmitted 186,184 U.S. driver convictions through CDLIS.

The conviction data shows that the system is working, and States can both transmit the conviction data on Mexico-domiciled drivers and query the system to retrieve conviction data. FMCSA and its State partners have experience from providing safety oversight for Mexico-domiciled drivers currently operating

within the border commercial zones. It is reasonable to believe that the small group of drivers who would be involved in the pilot program will be no more difficult to monitor than the much larger population of Mexico-domiciled drivers currently allowed to operate within the border commercial zones.

As an additional safety enhancement, compared to the previous demonstration project, the Agency will review the Mexican State license of a driver for violations that would result in a revocation or suspension in the United States. This will include violations in personal vehicles that would impact a CDL in the United States.

*Drug and Alcohol Testing.* Regarding the protocols for collection of specimens for drug and alcohol testing, FMCSA clarifies that Mexico is using procedures equivalent to those established by DOT regulations. A copy of the 1998 MOU between DOT and the Government of Mexico is included in the docket for this notice.

Urine specimens for controlled substances testing must be collected in a manner consistent with 49 CFR part 40. Procedures for Transportation Workplace Drug and Alcohol Testing Programs. During the 2007–2009 demonstration project, an independent evaluation panel conducted its own assessment of the urine collection procedures at four collection facilities in Mexico. The panel concluded that Mexico has a collection program with protocols that are at least equivalent to U.S. protocols found in 49 CFR part 40. Because there are no U.S.-certified laboratories in Mexico, Mexico-domiciled motor carriers must comply by ensuring that the specimens are tested in a U.S.-certified laboratory. The participants in the 2007–2009 demonstration project all had specimens tested in U.S.-certified laboratories located in the United States.

In the new pilot program, urine collection may continue to take place in Mexico. The specimens will be processed in accordance with U.S. requirements. Drivers who refuse to report to the collection facility in a timely manner will be considered to have refused to undergo the required random test, and the motor carrier would be required to address the issue in accordance with FMCSA's Controlled Substances and Alcohol Use and Testing regulations (49 CFR part 382).

Currently, Mexico-domiciled drivers operating within the border commercial zones use this approach to comply with the random testing requirements of 49 CFR 382.305. The random selection of drivers must be made by a scientifically valid method; each driver selected for

testing must have an equal chance (compared to the motor carrier's other drivers operating in the United States) of being selected, and drivers must be selected during a random selection period. Also, the tests must be unannounced, and the dates for administering random tests must be spread reasonably throughout the calendar year. Employers must require that each driver who is notified of selection for random testing proceed to the test site immediately.

In addition, through the PASA, the Agency will determine whether the motor carrier has a program in place to achieve full compliance with the controlled substances and alcohol testing requirements under 49 CFR parts 40 and 382. The ability of the border commercial zone motor carriers to follow these procedures further demonstrates that Mexico-domiciled motor carriers are capable of satisfying the Agency's drug and alcohol testing requirements. Based on FMCSA's experience enforcing the controlled substances and alcohol testing requirements on border commercial zone motor carriers, the Agency believes long-haul Mexico-domiciled motor carriers can and will comply with the random testing requirements, especially given that some of the anticipated participants in the pilot program may already have authority to conduct operations within the border commercial zones.

The Agency's experience in this area and the drug collection facility reviews performed during the previous demonstration project make us confident that testing is being conducted correctly. In addition, the Agency will be conducting collection facility reviews during the pilot program to verify specimens are being collected correctly.

**Medical Qualifications.** FMCSA has compared each of its physical qualifications standards with the corresponding requirements in Mexico and continues to believe acceptance of Mexico's medical certificate is appropriate, especially given that some Mexican medical standards are more stringent than their U.S. counterparts.

For example, one of the areas where Mexico's standards exceed those of the U.S. is in Body Mass Index (BMI) and the association between BMI and certain medical conditions that could increase the risk of a driver having difficulty operating a CMV safely. Mexico's regulations include certain limits on BMI, as it relates to medical conditions related to obesity, whereas FMCSA's regulations do not include such requirements.

Another area where Mexico's physical examination and qualifications process is more rigorous is vision testing. Mexico's examination process includes a measurement of intraocular pressure, a test that may be indicative of glaucoma, a disease characterized by a pattern of damage to the optic nerve. FMCSA's regulations do not require a measurement of intraocular pressure.

Finally, the medical certification for an LFC is part of Mexico's licensing process for commercial drivers. This means the license is not issued or renewed unless there is proof the driver has satisfied the physical qualifications standards. This is not the case in the United States, where medical certification is not currently posted on the CDL record. FMCSA has issued regulations to move towards this level of oversight ("Medical Certification Requirements as Part of the CDL," final rule, published at 73 FR 73096, December 1, 2008), but Mexico has more stringent requirements in effect at this time.

There are some areas where FMCSA's requirements are more stringent. Specifically, FMCSA requires drivers be capable of distinguishing between red, green and yellow, while Mexico limits the color recognition requirement to red. Additionally, the U.S. medical examination has standards for both systolic and diastolic blood pressure readings while Mexico only has a standard on the systolic reading. A finding of equivalency, however, does not require that both country's standards be identical. Here, it was FMCSA's considered judgment that these differences would not diminish safety and that, therefore, the Mexican requirements are equivalent to U.S. requirements.

FMCSA has prepared a table comparing the United States' and Mexico's physical qualifications standards. A copy of the table is provided in the docket for this notice.

To assist in the review of Mexican regulations, FMCSA has added English versions of the regulations to the docket for this notice. This includes the Mexican regulations for the Transportation Preventive Medicine Service Regulations, the Federal Motor Carrier Transportation and Auxiliary Services Regulations, and the Federal Roads, Bridges, and Motor Carrier Transportation Act.

#### 4. Reciprocity With Mexico

The CTA, ATA, and numerous individual commenters stated that NAFTA reciprocity could not be achieved because of the current state of violence and corruption in Mexico.

OOIDA also provided U.S. State Department alerts to travelers and instruction to U.S. government employees as documentation of the inability of Mexico to provide "simultaneous and comparable" authority and access.

The Teamsters elaborated that "[s]ection 6901 limits funds to grant authority to Mexican-domiciled motor carriers to operate beyond the commercial zones to the extent that 'simultaneous and comparable authority to operating within Mexico is made available to motor carriers domiciled in the United States.'" Teamsters further stated that "[i]t is very clear that the safety of U.S. drivers traveling into Mexico cannot be ensured, and therefore simultaneous and comparable authority is not made available to U.S. motor carriers under the pilot program."

Ron Cole pointed out that a Congressional Research Report dated February 1, 2010, notes "[a]s of this writing the Mexican government has not begun accepting applications from U.S. trucking companies for operating authority in Mexico." The Texas Department of Motor Vehicles suggested that FMCSA provide detailed information on Mexico's regulatory requirements to the States and U.S. motor carriers that express an interest in participating in the program.

The ATA also endorsed allowing Mexico-domiciled motor carriers with U.S. investors to join the program as Mexico-domiciled motor carriers.

**FMCSA Response:** In response to the comments about reciprocity for U.S. motor carriers, FMCSA will continue to work closely with the Mexican government to ensure that U.S.-domiciled motor carriers are granted reciprocal authority to operate in Mexico during the pilot program. Mexico will publish rules for its current program before initiation of the program. Both English and Spanish versions of SCT's draft rules have been added to the docket for informational purposes.

In addition, the Department of Transportation is entering into a MOU with Mexico's SCT that requires that Mexico provide reciprocal authority.

The Agency will also work with the U.S. trucking industry to facilitate the exchange of information between the Mexican government and U.S. trucking companies interested in applying for authority to enter Mexico under this pilot program.

Both Teamsters and OOIDA commented on the ongoing violence in Mexico, and that it negatively impacts the possibility of U.S. motor carriers entering Mexico. Both cite to the U.S.

State Department travel advisory, and in turn point to a portion of section 6901 that states that "simultaneous and comparable authority to operate within Mexico is made available to motor carriers domiciled in the United States." The reference to the section 6901 language speaks to the ability of U.S. motor carriers to receive comparable operating authority from Mexico's SCT. The MOU between DOT and SCT provides for reciprocal access to each country. The SCT has issued proposed rules outlining procedures for U.S. motor carriers to operate in Mexico. They will have the ability to apply for authority and operate within Mexico similar to that of Mexico-domiciled motor carriers in the United States. Therefore, the statutory requirement has been met. It is an independent business decision on the part of motor carriers as to whether or not they wish to apply for authority, or use it once obtained. Hundreds of companies are currently operating in the border region, and four U.S. motor carriers from the 2007 demonstration project continue to operate into Mexico. (Whereas the United States required Mexico-domiciled motor carriers participating in the 2007 demonstration project to relinquish their operating authority when the project was terminated, Mexico permitted the U.S.-domiciled motor carriers holding reciprocal authority to continue their operations in Mexico.)

OOIDA makes the claim that the violence in Mexico is a violation of the NAFTA as a nullification and impairment of U.S. motor carrier rights to engage in cross-border trade in services under Chapter 12 of the NAFTA. OOIDA contends that, "Federal, state and local governments within Mexico are seen by many to be complicit" in the drug-related violence. OOIDA quotes Annex 2004 of the NAFTA "Nullification and Impairment" language, including " \* \* \* being nullified or impaired as a result of the application of any measure that is not inconsistent with this Agreement \* \* \*" (emphasis added). The violence of the drug cartels, according to OOIDA, impairs U.S. motor carriers wishing to operate in Mexico. The fundamental error with this reasoning is that no measure has been put in place by the Government of Mexico that would prohibit U.S. motor carriers from doing business in Mexico, or would put U.S. motor carriers at such a competitive disadvantage that they are impaired. In order for Annex 2004 to apply, a State actor, such as SCT, must put in place "measures not inconsistent with" cross-

border trade in services. It could constitute a violation of the NAFTA if a Mexican agency put in place restrictions on U.S. motor carriers that would on its face not be discriminatory but have the ultimate effect of denying the motor carriers the benefits they reasonably expected under Chapter 12. That, however, is not the case here. The application for authority and using it to operate into Mexico requires several business decisions on the part of the motor carrier, and it is ultimately the motor carrier's decision to operate into Mexico, as much as it would be for a motor carrier to expand its business from short-haul to long-haul.

FMCSA also notes that while Mexico has not begun accepting applications from U.S. trucking companies for operating authority in Mexico, neither has FMCSA begun accepting applications from Mexico-domiciled motor carriers for participation in the pilot program. Mexico, like the United States, is updating its application procedures for U.S. motor carriers to operate into Mexico. Following the publication of this notice, FMCSA will begin accepting applications from Mexico-domiciled motor carriers to participate in the pilot program. Mexico will begin accepting applications from U.S. motor carriers to operate in Mexico soon thereafter. When Mexico's new processes are finalized, FMCSA will post information regarding those requirements on our Web page related to this pilot program so that States and industry are aware of the requirements. In any case, the United States will not grant authority to operate beyond the border commercial zones to any Mexico-domiciled motor carriers under this pilot program unless and until Mexico is ready to provide authority to U.S. motor carriers. FMCSA also uses this notice to clarify that Mexico-domiciled motor carriers with U.S. investors are eligible to participate in the pilot program.

#### 5. Pilot Program Requirements

The Agency received comments from the OOIDA, Teamsters, Advocates, and the Coalition regarding the requirements of FMCSA's pilot program authority.

OOIDA noted that, under 49 U.S.C. 31315(c)(2), a pilot program must include safety measures designed to achieve a level of safety that is "equivalent to, or greater than" the required level of safety. OOIDA also faulted the proposal for not elaborating on the countermeasures to protect the public health and safety of study participants and the general public.

FMCSA Response: The FMCSA and its State partners will ensure

compliance with the requirements of the pilot program the same way the Agency and the States ensure that Mexico-domiciled motor carriers operating in and beyond the border commercial zones comply with the applicable safety regulations. There are currently 6,861 motor carriers with authority to operate within the border commercial zones and an additional 1,063 motor carriers with Certificates of Registration to operate beyond the commercial zones. FMCSA and the States have a robust safety oversight program for Mexico-domiciled motor carriers that are currently allowed to operate CMVs in the United States. In FY 2010, FMCSA and its State partners conducted over 256,000 commercial vehicle inspections on vehicles operated by Mexico-domiciled motor carriers in the border commercial zones. Further, in order to assist in ensuring compliance, FMCSA imposed the following pre-requisites for Mexico-domiciled motor carriers to participate in the pilot program: (1) The application for long-haul operating authority, which includes requirements for proof of a continuous valid insurance with an insurance company licensed in the United States, in contrast to trip insurance used by motor carriers that operate solely within the border commercial zones; (2) successful completion of the PASA prior to being granted provisional authority; (3) the continuous display of a valid CVSA decal; and (4) a special designation in their USDOT Numbers to allow enforcement officials to readily distinguish between vehicles permitted to operate solely within the border commercial zone and those authorized to operate beyond the border commercial zones.

In addition, section 350 and 49 CFR 385.707 require that a CR be conducted within 18 months of the motor carrier being granted provisional operating authority. In the context of the pilot, FMCSA will prioritize long-haul Mexico-domiciled motor carriers for CRs based on a number of factors, such as the motor carrier's safety performance as measured through roadside inspections and crash involvement and the Agency's Safety Measurement System.

The vehicles and drivers will be monitored through data collected from electronic monitoring devices with GPS. In addition, the drivers' complete driving records will be reviewed in advance of participation and then annually thereafter. Also, during the first stage, the vehicles and drivers will be subjected to more inspections.

The FMCSA and its State partners have for many years provided safety

oversight under the same regulations for a much larger population of Mexico-domiciled motor carriers operating in U.S. border commercial zones and motor carriers with Certificates of Registration than the group that will participate in the pilot program. As a result, the Agency has a well-established and effective enforcement program in place to ensure that participants comply with the terms and conditions of the program. Moreover, full compliance with existing U.S. safety regulations and domestic point-to-point transportation prohibitions will be required, as is the case with Mexico-domiciled motor carriers operating in the border commercial zones and certificated motor carriers already operating beyond the border commercial zones.

As discussed in this section, FMCSA has taken necessary steps to comply with the requirement to provide an equivalent or greater level of safety, and countermeasures are therefore not required.

#### 6. PASA Requirements

Commenters, including Teamsters and Advocates, recommended that information about the PASAs be posted in the **Federal Register** rather than the FMCSA Register.

Teamsters recommended that the PASA also include a spot check of vehicles other than those to be used in the long-haul program to gather more information on the carrier's operations.

OOIDA, Advocates and Teamsters requested additional information on the Agency's standards for evaluating English language proficiency and one association submission indicated the English language screening and should be a component of the initial screening.

Advocates requested that the violation histories of applicant motor carriers, and their driver convictions records in both Mexico and the U.S. should be disclosed in the **Federal Register** publication as part of the PASA information disclosure. OOIDA requested additional information about participating motor carrier's past operations within the United States.

The IRP requested that the Agency use the PASA as an opportunity to reiterate the requirements for IRP and IFTA registrations.

OOIDA also recommended that PASAs be conducted again on motor carriers that participated in the previous demonstration project to ensure they are still safe motor carriers.

**FMCSA Response:** There appears to have been some confusion about where the PASA information will be published. The results of the PASAs

will be posted in the **Federal Register**. This was where the PASA information was posted during the previous demonstration project, and FMCSA will follow this protocol again in this pilot program. The operating authority application information will also continue to be posted in the FMCSA Register as required by applicable regulations.

If the motor carrier has passed the PASA, FMCSA will publish the motor carrier's request for authority in the FMCSA Register. The FMCSA Register can be viewed by going to: [http://li-public.fmcsa.dot.gov/LIVIEW/pkg\\_html.prc\\_limain](http://li-public.fmcsa.dot.gov/LIVIEW/pkg_html.prc_limain) and then selecting "FMCSA Register" from the drop-down box in the upper right corner of the screen. Any member of the public may protest the motor carrier's application on the grounds that the motor carrier is not fit, willing, or able to provide the transportation services for which it has requested approval. FMCSA will consider all protests before determining whether to grant provisional operating authority. Under FMCSA regulations, all motor carriers receive provisional new entrant authority for 18 months after receiving a USDOT Number and are subject to enhanced safety scrutiny during the provisional operating period.

Regarding the Teamster's request that additional vehicles in the motor carrier's fleet be inspected during the PASA, the Agency points out that all available vehicles that are used in U.S. operations will be subject to review during the CR. Additionally, vehicles operated in the U.S. by Mexico-domiciled motor carriers also regularly cross the border, where the vehicle inspection rate is 13 times higher than that of vehicles in the interior of the U.S. As a result, the Agency does not believe it is necessary to inspect vehicles other than the participating vehicles during the PASA.

FMCSA will check participating Mexico-domiciled drivers during the PASA through an interview in English. The interview will include a variety of operational questions, which may include inquiries about the origin and destination of the driver's most recent trip; the amount of time spent on duty, including driving time, and the record of duty status; the driver's license; and vehicle components and systems subject to the FMCSRs. The driver will also be asked to recognize and explain U.S. traffic and highway signs in English.

If the driver successfully completes the interview, FMCSA has confidence that the driver can sufficiently communicate in English to converse with the general public, understand traffic signs and signals in English,

respond to official inquiries and make entries on reports and records required by FMCSA.

Regarding Advocates' request that additional information be published about the history of Mexico-domiciled motor carriers and drivers, FMCSA is committed to publishing the results of the PASAs as required by section 6901(b)(2)(B) of the 2007 Appropriations Act. FMCSA will not publish violation data on individual Mexican drivers as protection of their personal privacy. FMCSA, however, will make additional information about all participating motor carriers' past U.S. performance available through its Safety Management System (SMS) as requested by OOIDA.

FMCSA agrees with the IRP's suggestion that information regarding the requirements for registration and fuel taxes be provided during the PASA. The Agency is revising its PASA procedures to include this information.

In regard to motor carriers that participated in the previous demonstration project that choose to apply to participate in the pilot program, it has always been in FMCSA's plan that PASAs will be completed on these motor carriers. FMCSA recognizes that there may have been changes in the motor carrier's operations since the demonstration project ended in 2009 and that a current PASA is needed.

#### 7. Credit to Demonstration Project Participants

Most commenters did not agree with the Agency's plans to give credit to motor carriers that participated in the demonstration project for the amount of time they operated safely. The Teamsters specifically contended that providing credit to previous participants was a violation of section 6901.

**FMCSA Response:** It appears that there was some confusion about how these motor carriers, if they chose to participate in the new pilot program, would enter the program, and how their safety would be evaluated. As noted above, it has always been FMCSA's plan and responsibility to conduct PASAs on all motor carriers applying for authority under the pilot program including motor carriers that participated in the prior demonstration project. As a result, the motor carrier's safety management controls will be assessed again in advance of participation. The only distinction that is being made for motor carriers that previously participated in the demonstration project is to give them credit for the amount of time they operated under the project in completing the 18 months of provisional authority before being eligible to

advance to Stage 3 in this pilot program. FMCSA believes this is consistent with section 6901 because the previous demonstration project was subject to the same pilot program statute and regulations. While it was ultimately determined that the previous project did not have sufficient participation to allow for a statistically valid demonstration that Mexico-domiciled motor carriers as a whole could comply with U.S. safety standards and this program has added additional safeguards, reports from both the OIG and the Independent Panel documented that motor carriers in the previous program had safety records that were comparable or better than the U.S. fleet averages.

As a result, if a motor carrier from the demonstration project chooses to apply to participate in the pilot program, it will be subject to the security check by the Department of Homeland Security, PASA, financial responsibility, CVSA decal, and CR requirements. If a motor carrier operated for 5 months under the demonstration project, it would then only need to operate safely for an additional 13 months under the pilot program before being eligible to advance to Stage 3 in the program.

#### 8. Use of Electronic Monitoring Devices and Compliance With Hours-of-Service Requirements

The majority of commenters did not support FMCSA funding the installation of electronic monitoring devices on Mexican trucks participating in the pilot program. Representative Peter A. DeFazio stated that, "it is outrageous that U.S. truckers, through the Federal fuel tax, will subsidize the cost of doing business for these Mexican carriers." Representative Reid J. Ribble articulated his understanding of his colleagues' disapproval of using the Highway Trust Fund to cover the costs of the electronic monitoring devices, but "recognize[d] that DOT cannot require Mexican motor carriers to cover these expenses because there is no similar requirement for U.S. carriers."

The BTA pointed out that the hours-of-service requirements for drivers of Mexico-domiciled motor carriers participating in the program must include the driver's on-duty and driving time in Mexico before reaching the Southern border. In addition, Teamsters asserted that electronic monitoring devices do not measure "on-duty/not driving" time and, as a result, Mexican drivers need to provide logs and supporting documents.

Several commenters did not understand if the data from the electronic monitoring devices would be

processed in real-time or at the conclusion of the program. In addition, there were several questions about who would be reviewing the data.

**FMCSA Response:** FMCSA developed guidelines for this new pilot program after extensive engagement with members of Congress and other stakeholders to better understand the strengths and weaknesses of the prior demonstration project that ended in March 2009. Using that valuable input, we worked with the Government of Mexico to craft a more robust program. As described in the April 13, 2011, **Federal Register** notice, all participating Mexican trucks will be required to be

equipped with electronic monitoring devices with GPS capabilities so that FMCSA is able to monitor the vehicle and use the data to address hours-of-service and domestic point-to-point transportation concerns. Stakeholders felt strongly that FMCSA include this as an element of the new pilot program.

FMCSA will own the monitoring equipment and thereby will have access and control of the data provided by the electronic monitoring devices and GPS units and will be able to customize reports and alerts from the system of the vendor that will collect the data. This proposed approach is necessary to address concerns expressed by members of Congress and others regarding hours-of-service and domestic point-to-point compliance. The most the Agency would spend on electronic monitoring devices for purchase, installation, and monitoring over the life of the 3-year program is \$2.5 million—less than 0.1 percent of the costs borne by U.S. firms subject to the tariffs imposed by Mexico in a 12-month period. As a result, we believe this is not only in the public interest to require and provide the electronic monitoring devices, but is also a good investment for the country. Moreover, as stated above, the in-truck equipment will be the property of the United States.

In addition, the electronic monitoring devices that FMCSA will install will have functionality to allow on-duty start and end times to be entered and tracked. As a result, FMCSA will be monitoring on-duty time in Mexico to ensure that drivers comply with FMCSA hours-of-service regulations while operating in the United States. FMCSA agrees, however, that the participating motor carriers will be expected to maintain the appropriate supporting documents for review by FMCSA during the safety and compliance reviews.

It is FMCSA's intention to acquire devices and monitoring software that will allow the Agency to develop alerts and reports of the vehicles and drivers'

information. These reports will be reviewed by FMCSA at least weekly to identify compliance issues. If there are any indicators of problems, FMCSA will initiate an investigation. FMCSA expects to use staff to conduct the analysis, but acknowledges that the conversion of the electronic data to a format usable for analysis may require some processing by a third party. Finally, once the pilot program is terminated, the program participants must return the equipment to FMCSA.

#### 9. Federal Motor Vehicle Safety Standards (FMVSS) and Emissions Issues

Commenters on this issue all supported the requirement that the equipment must meet the FMVSS or Canadian Motor Vehicle Safety Standards (CMVSS) at the time of manufacturing. However, Teamsters believe that the Agency's proposal that model years 1996 and newer do not need a label constitutes a waiver and that FMCSA does not have the authority to waive this requirement.

ATA argued that the vehicles should not have to comply with the FMVSS, but instead with the FMCSRs.

ATA and CTA stressed that all equipment operating in the United States must comply with Federal emissions standards. Both also expressed concern about the limited availability of low-sulfur fuels in Mexico and the impact on vehicle emissions.

Werner Enterprises requested clarification on the requirement that the vehicles meet the EPA requirements at the time of manufacturing.

**FMCSA Response:** Participating Mexico-domiciled motor carriers, the drivers they employ, and the vehicles they operate in the United States must comply with all applicable Federal and State laws and regulations, including those concerning customs, immigration, vehicle emissions, employment, vehicle registration and taxation, and fuel taxation.

**Environmental Issues.** First, Mexico-domiciled motor carriers operating in the United States must ensure compliance with all applicable Federal and State laws related to the environment. FMCSA has no reason to doubt that its sister Federal and State agencies will enforce their laws and regulations as they apply to long-haul Mexico-domiciled motor carriers, just as they have done for years with respect to the border commercial zone motor carriers as well as U.S.- and Canada-domiciled motor carriers.

Second, FMCSA does not have the statutory authority to enforce Federal

environmental laws and regulations, with the exception of those concerning vehicle noise emissions (49 CFR part 325). The Agency cannot, for example, condition the grant of operating authority to a motor carrier on the motor carrier's demonstration that its truck engines comply with EPA engine standards. FMCSA does not construe section 6901 as expanding the scope of the Agency's regulatory authority into environmental regulation or any other new area of regulation. Section 6901 makes no mention of environmental regulation, and FMCSA construes the reference to "measures \* \* \* to protect public health and safety" in section 6901(b)(2)(B)(ii) of the 2007 Appropriations Act as within the context of the scope of the Agency's existing statutory authority. Moreover, because FMCSA is a safety rather than an environmental regulatory agency, the pilot program is appropriately focused on evaluating the safety of long-haul Mexican truck operations in the United States, consistent with the scope of 49 U.S.C. 31315(c). However, vehicle data is being collected to assist with determining the potential environmental impacts of the pilot program (and for any further actions concerning the border) in accordance with the National Environmental Policy Act of 1969 (NEPA) and the Council on Environmental Quality's (CEQ) NEPA implementing regulations (40 CFR part 1500-1508) and FMCSA's NEPA Order 5610.1 as this program is not exempt from NEPA review.

Third, the Agency is conducting an Environmental Assessment (EA) in accordance with NEPA, CEQ implementing regulations, and FMCSA's NEPA Order 5610.1 to examine the potential impacts of this pilot project on the environment. It is important to note that the EA is limited to the environmental impacts of this particular pilot project. FMCSA will announce availability of the draft Environmental Assessment in a separate **Federal Register** notice and place a copy in the docket for this rulemaking.

Finally, EPA, in partnership with Mexico and other governments on both sides of the border, has conducted numerous diesel emissions reduction projects. These include vehicle testing, monitoring, and tracking, diesel retrofitting, accelerated use of ultra-low sulfur diesel fuel, and anti-idling programs. In addition, the State of California regulates particulate matter emissions from trucks through roadside emissions testing conducted throughout the State, including in its border commercial zones. California has also issued regulations requiring truck

engines, including those in Mexican trucks, to have proof that they were manufactured in compliance with the EPA emissions standard in effect on the date of their manufacture and will be able to conduct inspections of these vehicles while they are in California. Motor carriers are subject to penalties for the violation of these regulations. In addition, FMCSA considers these issues in its NEPA review for the pilot program.

Regarding the availability of low sulfur fuels, it is our understanding that low sulfur fuels are available in the border areas and large cities, so access should not limit participation in the project.

**FMVSS Compliance.** With regard to concerns about compliance with the FMVSSs, the Agency already requires Mexico-domiciled motor carriers to certify on their applications for operating authority that CMVs used in the United States meet the applicable FMVSSs in effect on the date of manufacture. While there is no requirement that the vehicles display an FMVSS certification label, the Agency believes the concerns about displaying a certification label have been adequately addressed by the Department through a notice-and-comment rulemaking proceeding.

On March 19, 2002, FMCSA and NHTSA published four notices requesting public comments on regulations and policies directed at enforcement of the statutory prohibition on the importation of CMVs that do not comply with the applicable FMVSSs. The notices were issued as follows: (1) FMCSA's notice of proposed rulemaking (NPRM) proposing to require motor carriers to ensure their vehicles display an FMVSS certification label (67 FR 12782); (2) NHTSA's proposed rule to issue a regulation incorporating a 1975 interpretation of the term "import" (67 FR 12806); (3) NHTSA's draft policy statement providing that a vehicle manufacturer may, if it has sufficient basis for doing so, retroactively certify a motor vehicle complied with all applicable FMVSSs in effect at the time of manufacture and affix a label attesting this (67 FR 12790); and (4) NHTSA's proposed rule concerning recordkeeping requirements for manufacturers that retroactively certify their vehicles (67 FR 12800).

After reviewing the public comments in response to those notices, FMCSA and NHTSA withdrew their respective proposals on August 26, 2005 (70 FR 50269). NHTSA withdrew a 1975 interpretation in which the agency had indicated that the Vehicle Safety Act is applicable to foreign-based motor

carriers operating in the United States. Accordingly, it is the Department's position that the FMVSSs do not obligate foreign-domiciled trucks engaging in cross-border trade to bear a certification label. Although FMCSA withdrew its NPRM, the Agency indicated that it would continue to uphold the operational safety of CMVs on the nation's highways, including that of Mexico-domiciled CMVs operating beyond the United States-Mexico border commercial zones, through continued vigorous enforcement of the FMCSRs, many of which cross-reference specific FMVSSs.

FMCSA explained in its withdrawal notice that Mexico-domiciled motor carriers are required under 49 CFR 365.503(b)(2) and 368.3(b)(2) to certify on the application form for operating authority that all CMVs they intend to operate in the United States were built in compliance with the FMVSSs in effect at the time of manufacture. These vehicles will be subject to inspection by enforcement personnel at U.S.-Mexico border ports of entry and at roadside inspection sites in the United States to ensure their compliance with all applicable FMCSRs, including those that cross-reference the FMVSSs.

For vehicles lacking a certification label, enforcement officials could, as necessary, refer to the VIN (vehicle identification number) in various locations on the vehicle. The VIN will assist inspectors in identifying the vehicle model year and country of manufacture to determine compliance with the FMVSSs based on guidance provided by FMCSA. Based on information provided by the Truck Manufacturers Association in a September 16, 2002, letter to NHTSA and FMCSA, FMCSA believes model year 1996 and later CMVs manufactured in Mexico meet the FMVSSs. The Agency continues to believe this information is an appropriate basis for considering whether a vehicle is likely to have been manufactured in compliance with the FMVSSs because most of the members of TMA have truck manufacturing facilities in Mexico that are used to build vehicles for both the United States and Mexico markets.

Therefore, FMCSA continues to use its August 26, 2005 guidance, "Enforcement of Mexico-Domiciled Motor Carriers' Self-Certification of Compliance with Motor Vehicle Safety Standards," which provides technical assistance to Federal and State enforcement personnel on this issue. The guidance indicates that if FMCSA finds, during the PASA or subsequent inspections, that a Mexico-domiciled motor carrier has falsely certified on the

application for authority that its vehicles are FMVSS compliant, that the Agency may use this information to deny, suspend, or revoke the motor carrier's operating authority or certificate of registration or take enforcement action for falsification, if appropriate. A copy of the Agency's guidance is included in the docket referenced at the beginning of this notice.

Although Mexico-domiciled vehicles may be less likely to display FMVSS certification labels, FMCSA believes continued strong enforcement of the FMCSRs in real-world operational settings, coupled with existing regulations and enhanced enforcement measures, will ensure the safe operation of Mexico-domiciled CMVs in interstate commerce. As the Agency stated in the 2005 withdrawal notice, FMCSR enforcement, and by extension the FMVSSs they cross-reference, is the bedrock of these compliance assurance activities. The Agency continues to believe it is not necessary to require participating motor carriers to ensure their CMVs display an FMVSS certification label. Requiring CMVs to have FMVSS certification labels would not ensure their operational safety. The American public is better protected by enforcing the FMCSRs than by a label indicating a CMV was originally built to certain manufacturing performance standards. See 70 FR at 50287.

There appeared to be some confusion about when the vehicles would be checked for FMVSS or CMVSS certification. During the PASA, the Agency will check those vehicles identified for the long-haul trucking program to determine whether the vehicle displays an FMVSS or CMVSS certification label, or whether the vehicle is a 1996 model year or newer truck. Alternatively, if there is no label, the motor carrier may present a certificate or other documentation from the manufacturer confirming that the vehicle was built to the appropriate standard.

FMCSA understands ATA's position that the safety of the participating vehicles should be determined based on compliance with the FMCSRs, rather than the FMVSSs. FMCSA acknowledges that vehicle manufacturers must comply with the FMVSSs at the vehicle manufacturing state and that the vehicles may not meet the FMVSSs after they are placed in service. However, the Agency's inspection of participating vehicles during the PASA, inspections, and CR will confirm compliance with the FMCSRs, as is required by 49 CFR 390.3.

#### 10. Statistical Validity

Teamsters asserted that the Agency's evaluation plan was flawed because the statute requires evaluation based on participants, not the number of inspections.

Advocates challenged the Agency's null hypothesis and asserted that the evaluation plan does not conform to established scientific research methodology.

Advocates also requested additional information on how the rate of violations per type of inspection performed will be calculated. Advocates further requested information on the specific statistical tests or methods of analysis to be used, and suggested that a peer review panel review the study design. Specifically, Advocates noted that "the elements contained in the pilot program statutory provision under 49 U.S.C. 31315(c) require more specific and detailed information about the experimental design of the Pilot Program than the agency has provided."

*FMCSA Response:* Section 31315(c)(2)(C) of title 49, United States Code, requires a pilot program to have a sufficient number of participants to allow for statistically valid findings. Given that the majority of statistical comparisons between the Mexico-domiciled and U.S.-domiciled motor carriers will focus on roadside inspection data, the relevant question becomes whether or not the total number of inspections performed on the pilot program participants will be sufficient to allow for valid statistical comparisons. The Agency believes that the sample size targets presented in the April 13, 2011, **Federal Register** notice will ensure that the number of motor carrier participants will be sufficient for achieving this objective. As discussed in that notice, based on the results of the application and vetting process from previous border demonstration project, the Agency estimates an upper limit for the total number of Mexico-domiciled motor carriers both capable and interested in taking advantage of the NAFTA cross border provisions at 316 motor carriers. Thus, if 46 motor carriers were to participate in the current effort, the sample would represent 15 percent of this population.

The Agency acknowledges, however, that the statistical validity of the findings also hinges upon the representativeness of the study data. For example, if most of the inspection data collected in the pilot program were to come from just a few of the Mexico-domiciled motor carriers, the question of sample bias becomes a legitimate concern when producing survey

estimates. To mitigate the effect of this potential bias, the Agency plans to calculate the various violation rates both for the population of program participants as a whole, as well as for individual program participants. Thus, for each metric in question, the violation rates for each of the program participants will be averaged to give an alternate violation rate for the program participant population. This alternate violation rate calculation will help to minimize the effect of inspection data being potentially dominated by a small number of motor carriers. Comparison of the original population violation rate to this alternate violation rate calculation will give the Agency an indication of the magnitude of this problem.

With regard to the United States' obligations under NAFTA, FMCSA does not have reason to deny Mexico-domiciled motor carriers from operating in the United States unless it can demonstrate that the motor carriers pose a safety threat to the American public. Thus, the null hypothesis for the study begins with a presumption that Mexico-domiciled motor carriers are as safe as U.S. motor carriers. The data from the study will be used to determine whether this assumption should be rejected or not. While the term "null hypothesis" can be used for any hypothesis set up primarily to see whether it can be rejected, the more common statistical practice is to hypothesize that two methods, populations, or processes are the same and then determine if there is sufficient statistical evidence to reject this null hypothesis. If one can demonstrate definitively from the pilot program data that Mexico-domiciled motor carriers are inherently less safe than U.S. motor carriers, then the Agency would be justified in rejecting this null hypothesis and restricting Mexico-domiciled motor carrier operations in the United States. If, on the other hand, the Agency cannot establish as a fact, there would be no justification for denying these motor carriers full access to our roadways as guaranteed under NAFTA. Had the null hypothesis for the study begun with the assumption that Mexico-domiciled motor carriers were inherently less safe than U.S. motor carriers (as recommended by the commenter), then all non-statistically significant results from the study would imply that Mexico-domiciled motor carriers are less safe than U.S. motor carriers, since this initial assumption would not be rejected. In contrast, the approach taken by FMCSA is a prudent one, and is similar to the scientific approach used

in virtually all medical research examining safety risk. In such studies, the null hypothesis assumes that a particular food, chemical, or activity poses no safety risk, or no safety benefit. In other words, the null hypothesis always assumes that the item or activity in question has absolutely no effect. The results of the study are used to determine whether one can reject this null hypothesis, to identify a clear risk or clear benefit attributable to the item or activity. Additionally, the null hypothesis is supported by the safety data on border commercial zone motor carriers and the Mexico-domiciled motor carriers that participated in the previous demonstration project.

With regard to the Advocates' reference to 49 U.S.C. 31315(c), the Agency believes the commenter's interpretation of this section is incorrect. The section does not speak to the findings of a program or the conclusions to be drawn from them. Rather, the section simply states that a pilot program must be designed to ensure that public safety is not compromised while the study is being conducted. All of the safeguards put in place by the Agency, such as requiring pilot program participants to achieve a specified level of safety performance at various stages of the pilot in order to continue with their participation (as stipulated in the original notice requesting public comment), speak directly to this issue.

On a routine basis, program participant vehicles will be inspected at border crossings and other roadside inspection stations. Additionally, under section 350, each participating motor carrier will, within 18 months of being granted provisional operating authority, be subject to a full CR. During the CR, the Agency plans to inspect both "program participating" and "nonparticipating" vehicles of a Mexico-domiciled motor carrier that operate in the United States.

Concerning how the violation rates obtained from the study will be used, these rates will be directly compared to similar rates from U.S. motor carriers. Although a motor carrier's crash history is a good predictor of future crashes, given the relatively short time frame of the pilot study, it is anticipated that participating motor carriers will have very few, if any, crashes while operating in the United States. Thus, violation rates based on inspection data will be used to assess the safety performance of each participating motor carrier. This same approach is used to evaluate U.S. motor carriers. For example, six of the seven performance metrics used to assess a motor carrier's safety risk under

the Agency's Compliance, Safety, Accountability (CSA) program are based on data collected from the roadside.

Inspection data used in the study will be based on Level 1, 2, and 3 inspections. The Agency anticipates that inspections performed on program participants' trucks will be, on average, as thorough and rigorous as those performed on U.S. motor carriers. For those violations only observable by a Level 1 inspection, such as brake violations, only Level 1 inspection data will be used when making comparisons between program participants and U.S. motor carriers.

The Agency plans to evaluate the safety performance of the Mexico-domiciled motor carriers participating in the pilot project by looking at a variety of metrics and comparing their performance on these metrics with the performance of U.S. motor carriers. All of these metrics represent proportions of some type (proportion of inspections having a particular violation, or the proportion of motor carriers having a particular violation), and, as such, statistical tests designed for comparing proportions from two populations can be used. The metrics to be evaluated are discussed below.

**Vehicle Out of Service (OOS) Rate.** The vehicle OOS rate will be calculated in two different ways for the Mexico-domiciled motor carriers. First, the rate will be calculated in the standard manner, summing up all vehicle OOS violations found from all vehicles belonging to Mexico-domiciled motor carrier participants, divided by the total number of vehicle inspections performed in the United States on these vehicles during the study.

In addition, a vehicle OOS rate will be calculated for each participating motor carrier based upon the data collected during the duration of the pilot program. Using these carrier-level OOS rates, the average value for these carrier-level vehicle OOS rates will then be computed by summing up the individual vehicle OOS rates and dividing by the number of motor carriers having an OOS rate assigned to them. This last statistic, which is the average value of each motor carrier's OOS rate, will be used as a check to determine if the standard vehicle OOS rate calculated for the Mexican trucks participating in the pilot program is dominated by data from a small number of carriers. If it is, then more emphasis will be placed on the average OOS rate in the analysis.

**Vehicle Violation Rate.** The vehicle violation rate is similar to the vehicle OOS rate, except that all violations will

be considered, rather than just OOS violations.

**Driver OOS Rate.** The driver OOS rate for the Mexico-domiciled drivers participating in the pilot program will be calculated in the same manner as the vehicle OOS rates. First, the rate will be calculated in the standard manner, summing up all driver OOS violations found from all Mexico-domiciled drivers participating in the pilot, divided by the total number of driver inspections performed on these drivers during the study. In addition, the driver OOS rate will be calculated for each Mexico-domiciled motor carrier in the pilot, and these carrier-level driver OOS rates will next be averaged over all participating motor carriers.

**Driver Violation Rate.** The driver violation rate is similar to the driver OOS rate, except that all violations will be considered, rather than just OOS violations.

**Safety Audit Pass Rate.** The percentage of motor carriers in the pilot program that pass the PASA will be calculated and compared to the percentage of U.S.-domiciled motor carriers that pass the new entrant safety audit. The Agency recognizes that there are differences in these two types of reviews. However, they both evaluate success at meeting the established safety standards.

**Crash Rate.** Because crashes are relatively rare events, FMCSA will likely have insufficient crash data to evaluate safety performance of Mexico-domiciled motor carriers in this area. However, if sufficient data are available to produce meaningful statistical results, crash rate comparisons will be produced. It is anticipated that motor carriers participating in the pilot program will be involved in a wide variety of trucking operations, and many, if not most, of them will not be operating their vehicles full-time in the United States. For this reason, crash rates for carriers participating in the pilot program will be calculated in terms of crashes per million miles, and not crashes per power unit. All crashes that have a severity level of towaway or higher will be included in the crash count.

Crash rates will be calculated based on crashes occurring within both the United States and Mexico, and on mileage accumulated within both countries.

**Specific Violation Rates.** In addition to overall vehicle and driver violation and OOS rates, violation rates for study participants will be calculated for specific types of violations, including traffic enforcement, driver fitness, and hours of service. These violation rates

measure safety performance in subject areas considered key by Agency's CSA program. The purpose of this is to see whether there are specific types of violations that are more common among the Mexico-domiciled carriers than their U.S. counterparts.

**Traffic Enforcement.** Of particular interest are traffic enforcement violations pertaining to local laws, including, but not limited to, speeding, reckless driving, or driving too fast for conditions. Because traffic enforcement pertaining to driving only occurs when a violation is suspected, the exposure measure for these violation rates will not be total inspections, but, rather, the total number motor carrier trucks participating in the program, prorated by the number of months each motor carrier is in the pilot program. This traffic enforcement violation rate will be compared to a similar rate for U.S.-domiciled motor carriers, based on 36 months of data.

**Driver Fitness.** A driver fitness violation rate will be calculated for the motor carriers participating in the pilot program by summing-up all of the driver fitness-related violations detected during the program for participating motor carriers, divided by their total number of inspections. This statistic will be compared to this same rate for U.S.-domiciled motor carriers.

**Hours-of-Service.** An hours-of-service violation rate will be calculated for the motor carriers participating in the pilot program by summing-up all of the hours-of-service violations detected during the program for participating motor carriers, divided by their total number of inspections. This statistic will be compared to this same rate for U.S.-domiciled motor carriers.

The Agency will conduct a peer review to assess the study design. Upon its conclusion, we will submit the results of the peer review to the docket for this notice. If the peer review results in recommended changes, the Agency will publish a notice in the **Federal Register** explaining the change.

Regarding the assertion that Mexico-domiciled drivers are not cited for violations in the United States, FMCSA does not have any information available that would corroborate this statement.

#### 11. Minimum Levels of Financial Responsibility

The Coalition requested that the minimum insurance requirements for all CMVs, domestic and foreign, be increased before conducting the pilot program.

The American Association for Justice interpreted the Agency's regulations as allowing participating motor carriers to

self insure and suggested that all Mexican motor carriers carry insurance at all times.

**FMCSA Response:** FMCSA does not agree with the Coalition's suggestion that motor carriers transporting general freight should be required to have a greater level of financial responsibility. Mexico-domiciled motor carriers must establish financial responsibility, as required by 49 CFR part 387, through an insurance carrier licensed in a State in the United States. Based on the terms provided in the required endorsement, FMCSA Form MCS-90, if there is a final judgment against the motor carrier for loss and damages associated with a crash in the United States, the insurer must pay the claim. The financial responsibility claims would involve legal proceedings in the United States and an insurer based here. There is no reason that a Mexico-domiciled motor carrier, insured by a U.S.-based company, should be required to have a greater level of insurance coverage than a U.S.-based motor carrier.

Increasing the minimum levels of financial responsibility for all motor carriers is beyond the scope of this notice and would require a rulemaking.

In accordance with section 350(a)(1)(B)(iv), FMCSA must verify participating motor carriers' proof of insurance through a U.S., State-licensed insurer. As a result, participating motor carriers may not self-insure.

#### 12. Vehicle Inspection and Fleet Safety

Teamsters expressed concern that only the segment of the motor carrier's fleet participating in long-haul trucking would be inspected. They also questioned how inspections at "a rate comparable to other Mexico-domiciled motor carriers" will be effective. Additionally, several commenters questioned what level of inspections would be conducted during each phase of the pilot program.

**FMCSA Response:** As noted previously, while only participating vehicles will be inspected during the PASA, the maintenance of all of the motor carrier's available vehicles that operate in the United States will be subject to inspection during the CR. Additionally, motor carriers currently operating within the border commercial zone are subject to inspections on a routine basis. The inspection rate of border commercial zone motor carriers is significantly higher than the average U.S. motor carrier. As a result, at all stages of the program, the participating motor carriers' drivers and vehicles are expected to be inspected more frequently than those of the average U.S. motor carrier.

In FY 2010, FMCSA and its State partners conducted 2,614,052 commercial vehicle inspections on U.S.-based motor carriers with 4,125,778 CMVs. FMCSA and its State partners conducted 256,151 CMV inspections on Mexico-domiciled motor carriers within the border commercial zones with 29,566 CMVs. Thus, the inspections rates for U.S.-based motor carriers and Mexico-domiciled motor carriers are 0.636336% and 8.6337% respectively. At an inspection rate that is 13 times greater for Mexico-domiciled motor carriers, FMCSA is confident that the inspections performed on motor carriers during Stages 2 and 3 should be sufficient to ensure continued safe operations. Additionally, Mexico-domiciled motor carriers that are in Stages 2 and 3 of the pilot program are required to be inspected at least once every 90 days in order to maintain a valid CVSA safety decal.

FMCSA will use all available inspection levels as well as license/insurance check inspections on the vehicles during the program. The level of inspection chosen will depend on a number of factors including the presence of a CVSA decal, previous history, and other observations by the inspector. At a minimum, a Level I inspection will be conducted if a CVSA decal has expired or will soon expire.

It must also be noted that participating vehicles will be required to maintain a current CVSA decal and must be inspected every 90 days. This is not a requirement for U.S. motor carriers or border commercial zone motor carriers.

#### 13. Transparency

Advocates requested that all of the Agency's agreements with Mexico be subject to notice and comment and that each step in the pilot program be subject as well.

Advocates and ATA advised that the monitoring group should be independent from the Agency's Motor Carrier Safety Advisory Committee (MCSAC), and Advocates further indicated that under the Federal Advisory Committee Act (FACA), the use of a subcommittee of a Federal advisory committee to provide consensus advice and recommendations to a Federal official is prohibited. Advocates questioned whether the MCSAC participants comprised persons with backgrounds in basic research and statistical analysis who can offer advice on how decisions made by the monitoring group will affect the research design. Advocates requested that FMCSA provide all reports to the

appropriate congressional authorities and the public in a timely fashion.

The Coalition requested that monthly or quarterly reports of data collection be made available to the public.

**FMCSA Response:** The FMCSA has added copies of the 1991 MOU regarding CDL reciprocity and the 1998 MOU regarding drug and alcohol testing protocols to the docket for this notice. However, these documents are for informational purposes only and are not the subject of comments as they were negotiated by the Governments of the United States and Mexico more than a decade ago. The MOU between DOT and SCT that has been under negotiation since January 2011, is not subject to public comment, and the terms of that MOU have been explained in the April 13, 2011, **Federal Register** notice. The terms for U.S.-domiciled motor carriers wishing to travel south can be found in the draft rules proposed by SCT, which have been placed in the docket.

The FMCSA provided the opportunity for notice and comment on all steps of this pilot program through the notice published on April 13, 2011, and will not be providing another notice.

Regarding the monitoring groups, FMCSA clarifies that there will be a government monitoring group to discuss bi-lateral operational issues. In addition, there will be an independent monitoring group.

The FMCSA agrees that the group must be independent from the Agency. As a result, FMCSA continues to believe that the most efficient and effective process is to establish a subcommittee of the MCSAC. The MCSAC has proven itself to be independent of the Agency. We, however, want to clarify that the subcommittee would be able to invite input from individuals outside the MCSAC itself and would report out through the Committee. As a result, consistent with FACA requirements, only the MCSAC will transmit recommendations and advice to the FMCSA Administrator. FMCSA will make reports of the monitoring group available to the appropriate congressional committees and the public in a timely manner.

The FMCSA will maintain a comprehensive Web site dedicated to this pilot program to keep the public informed about how the program progresses. In addition to the specific information mentioned within this notice, FMCSA will publish the name and DOT Number of each participating motor carrier, the Vehicle Identification Numbers (VIN) of all vehicles approved for long-haul transportation, details on the driver/vehicle inspections the motor

carrier has received, and details on any crashes involving the motor carrier. FMCSA will also publish aggregate data regarding the number of trips taken by participating motor carriers and the destinations of those trips.

#### 14. Resources

Senator John D. Rockefeller expressed a concern about the adequacy of FMCSA, State law enforcement, and Immigration and Customs Enforcement (ICE) resources to support the program. Representative Hunter indicated he believed the Agency had gaps in its ability to properly manage the previous program. OOIDA indicated that based on contacts at the International Association of Chiefs of Police, more training on cabotage is needed.

The Texas Department of Motor Vehicles recommends that FMCSA provide financial assistance to the Border States to off-set the Border States' administrative and enforcement expenses related to the pilot program.

**FMCSA Response:** The FMCSA notes that the number of Mexico-domiciled motor carriers and vehicles that will participate in the pilot program is extremely small compared to the population of motor carriers and vehicles currently operating within the border commercial zones. Most of the motor carriers that would participate in the pilot program already have authority to operate in the border commercial zones, so their participation in the program would not result in a significant increase in the population of Mexico-domiciled motor carriers operating in the United States. Further, as to concerns regarding possible strains on border inspection facility capacity, it should be noted that FMCSA has no reason to believe the number of Mexican trucks crossing the border during the pilot program will increase significantly because the cargo carried by the long-haul trucks would have crossed the border in any event via short-haul, border commercial zone trucks.

The FMCSA and its State partners have sufficient staff, facilities, equipment, and procedures in place to meet the requirements of this pilot program. This conclusion is based on the Agency's experience providing safety oversight for Mexico-domiciled motor carriers currently authorized to operate within the border commercial zones and on its regular liaison with its State enforcement partners with whom the Agency has worked for years in anticipation of the opening of the border to long-haul Mexico-domiciled motor carriers. In fact, during the previous program, FMCSA was able to confirm that over 99 percent of the participating

vehicles received an inspection at the border. Further, FMCSA can find no evidence that the remaining less than one percent of the vehicles were not inspected as they crossed the border, and neither the OIG, nor the Independent Panel, nor any other entity has identified any vehicles that crossed without an inspection. FMCSA currently employs 260 Federal personnel dedicated to border enforcement activities.

In response to the OOIDA's concerns about the burden on the States for providing safety oversight for Mexico-domiciled motor carriers and the Texas Department of Motor Vehicles comment regarding making funding available to Border States, FMCSA is authorized under 49 U.S.C. 31107 to provide border enforcement grants for carrying out CMV safety programs and related enforcement activities and projects and has \$32 million available in FY2011 for this purpose. The Agency's State partners along the border employ 456 State officials for this purpose. Therefore, the Congress has provided funding for enforcement resources dedicated exclusively to ensuring the safe operation of foreign-domiciled motor carrier operations.

The FMCSA works with the States to ensure that motor carrier safety enforcement personnel receive extensive training. From 2008 to date, over 5,800 State motor carrier safety inspectors have received North American Standard (NAS) inspection procedures training. The NAS training course is designed to provide State motor carrier safety enforcement personnel with the basic knowledge, skills, practices, and procedures necessary for performing inspections under the Motor Carrier Safety Assistance Program (MCSAP).

Additionally, through the Agency's partnership with the International Association of Chiefs of Police (IACP), four Foreign CMV Awareness Training sessions have been conducted on a recurring basis including a session that covers cabotage laws. Approximately 215 officers were certified to train law enforcement officers throughout the United States using this course which includes cabotage information.

The training these officers will provide to other law enforcement officials will ensure patrol officers are informed about potential safety and enforcement issues involving foreign-based CMVs and drivers operating beyond the border commercial zones. Therefore, not only has FMCSA provided funding resources to support the States' role in providing safety oversight for Mexico-domiciled motor

carriers operating in the United States, the Agency has provided training. Presently, 1,755 law enforcement officers have received such training.

Finally, during the program, FMCSA will monitor for domestic point-to-point transportation violations using the information obtained from the GPS feature of the electronic monitoring devices installed on the vehicles and during CRs.

#### 15. Impact on Truck Drivers, Small Fleets and Businesses

Over 1,000 commenters felt that this pilot program would have a negative economic impact on the United States at a time when unemployment was high.

**FMCSA Response:** The FMCSA does not believe the pilot program will have a significant adverse impact on U.S. motor carriers or drivers. As an initial matter, however, it is important to note that FMCSA lacks the authority to alter the terms under which Mexico-domiciled motor carriers operate in the United States based on the possible economic impact of those motor carriers on U.S. motor carriers. FMCSA's responsibility, pursuant to the November 2002 presidential order, is to implement NAFTA's motor carrier provisions in a manner consistent with the motor carrier safety laws.

While the wages for a Mexico-domiciled driver may differ from those of a U.S.-domiciled driver, wages represent only one factor in the cost of a trucking operation. The costs for safety management controls to achieve full compliance with U.S. safety requirements, equipment maintenance, fuel, taxes and insurance costs must also be considered. Therefore, driver wages alone should not be considered the determining factor for an economic advantage.

Also, Mexico-domiciled motor carriers cannot compete against U.S.-domiciled motor carriers for point-to-point deliveries of domestic freight within the United States. Section 365.501(b) of title 49, Code of Federal Regulations, provides that "a Mexico-domiciled motor carrier may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo." FMCSA notes that engaging in domestic point-to-point transportation in the U.S. is operating beyond the scope of a Mexico-domiciled motor carrier's authority, and FMCSA and its State partners are actively engaged in enforcing this regulation. Vehicles caught in this practice will be placed out-of-service, participating motor carriers may be subject to civil penalties

of up to \$11,000 and more comprehensive review of operations by FMCSA, and they could be removed from the pilot program.

#### 16. Concerns About Furthering Illegal Activity

Numerous commenters noted the existence of drug cartels in Mexico and expressed concern that the long-haul program would increase drug trafficking.

**FMCSA Response:** The FMCSA disagrees with the commenters on this issue. FMCSA is not aware of any information that would suggest the pilot program will increase the extent to which illegal activities occur. Mexico-domiciled motor carriers are already allowed to operate in border commercial zones. Many of the motor carriers that may apply for authority to operate beyond the border commercial zones and participate in the pilot program are already conducting CMV operations in the U.S., albeit limited to the border commercial zones. Moreover, as noted above, FMCSA does not anticipate that the pilot program will result in a substantial increase in the number of Mexican trucks crossing the border. It follows that the pilot program will not increase instances of cross-border drug smuggling in any significant way.

Finally, as the U.S. Immigration and Customs Enforcement's inspections of long-haul trucks will not change as a result of this pilot, we do not believe this program introduces any new risks.

#### FMCSA's Intent To Proceed With Pilot Program

In consideration of the above, FMCSA believes it is appropriate to commence the pilot program after the Department's Inspector General completes his report to Congress, as required by section 6901(b)(1) of the 2007 Appropriations Act, and the Agency completes any follow-up actions needed to address any issues that may be raised in the report. FMCSA reiterates that before an applicant Mexico-domiciled motor carrier may receive operating authority, it must submit a complete and accurate application; complete the DHS security review process; successfully complete the PASA; and file with FMCSA evidence of adequate insurance from a U.S. company. In addition, as stated above, FMCSA will complete reviews of Mexican licensing facilities to ensure compliance with the 1991 MOU before granting authority. FMCSA does not anticipate that any Mexico-domiciled motor carrier seeking participation in the pilot program will receive its provisional operating authority before the first weeks of August 2011.

Issued on: June 29, 2011.

**William Bronrott,**  
Deputy Administrator.  
[FR Doc. 2011-16886 Filed 7-7-11; 8:45 am]  
BILLING CODE 4910-EX-P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2011-0145]

#### Qualification of Drivers; Exemption Applications; Diabetes Mellitus

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA).

**ACTION:** Notice of applications for exemption from the diabetes mellitus standard; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 22 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

**DATES:** Comments must be received on or before August 8, 2011.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA-2011-0145 using any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- **Mail:** Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- **Hand Delivery:** West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- **Fax:** 1-202-493-2251.

**Instructions:** Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below for further information.

**Docket:** For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or

# APPENDIX H – FEDERAL REGISTER NOTICES



63344

Federal Register / Vol. 76, No. 197 / Wednesday, October 12, 2011 / Notices

The meetings will be accessible to persons with disabilities. If special services, such as an interpreter or sign language services, are needed, please contact Mr. Michael P. Anderson, New York State Department of Transportation.

Written comments on the scope of the EIS can be sent to Michael P. Anderson, Project Director, New York State Department of Transportation, 4 Burnett Boulevard, Poughkeepsie, New York 12603.

Comments on the scope of the EIS can be submitted by 5 p.m. on November 15, 2011.

## 6. FHWA Procedures

The EIS is being prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, and implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500 to 1508) and FHWA environmental impact regulations (23 CFR Part 771) and the FHWA statewide planning/metropolitan planning regulations (23 CFR Part 450) and Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU) of 2005. This EIS will also comply with requirements of the Section 106 of the National Historic Preservation Act of 1966, as amended, Section 4(f) of the U.S. Department of Transportation Act of 1966, the 1990 Clean Air Act Amendments, the Rivers and Harbors Act of 1899, the Coastal Zone Management Act of 1972, Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority and Low-Income Populations), Executive Order 11990 (Protection of Wetlands), and other applicable federal laws, rules, and regulations.

This EIS will also satisfy environmental review requirements of the New York State Environmental Quality Review Act (SEQRA; 6 NYCRR Part 617). Consistent with 6 NYCRR Part 617.15, this NOI eliminates the need for a positive declaration under SEQRA.

Regulations implementing NEPA as well as provisions of SAFETEA-LU call for enhanced agency and public involvement in the EIS process. An invitation to all Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project will be extended. In the event that an agency or tribe is not invited and would like to participate, please contact Michael P. Anderson at the contact information listed above. A Coordination Plan will be developed summarizing how the public and agencies will be engaged in the process.

The plan will be posted to the project Web site (<http://www.tzbsite.com>). The public coordination and outreach efforts will include public meetings, open houses, a project Web site, stakeholder advisory and work groups, and public hearings.

The project sponsor may identify a locally preferred alternative in the DEIS when made available for public and agency comments. Public hearings on the DEIS will be held in Rockland and Westchester Counties. On the basis of the DEIS and the public and agency comments received, the Project Sponsor will identify the locally preferred alternative in the FEIS. The FEIS will serve as the basis for federal and state environmental findings and determinations needed to conclude the environmental review process. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on October 12, 2011.

Jonathan D. McDade,  
New York Division Administrator, Federal Highway Administration.

[FR Doc. 2011-26280 Filed 10-11-11; 8:45 am]

BILLING CODE 4910-22-P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No FMCSA-2011-0097]

#### Pilot Project on NAFTA Trucking Provisions; Commercial Driver's License Memorandum of Understanding with the Government of Mexico

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA).

**ACTION:** Notice.

**SUMMARY:** Since entering into a Memorandum of Understanding (MOU) with Mexico on November 21, 1991, on the equivalency of a Mexican Licencia Federal de Conductor (LF) and a commercial driver's license (CDL) issued in the United States, the U.S. motor carrier safety regulations have recognized the LF as equivalent to a CDL. As the Federal Motor Carrier Safety Administration (FMCSA) explained in its *Federal Register* notice of April 13, 2011 (the April Notice), proposing the requirements for the United States-Mexico cross border long-haul trucking pilot program, the Secretary of Transportation will accept

only three areas of Mexican regulation as being equivalent to U.S. regulations. One of those areas is the reciprocal recognition of the LF and the CDL.

In the Agency's July 8, 2011, *Federal Register* notice (the July Notice), however, FMCSA recognized concerns about the on-going acceptance of the existing CDL MOU and committed to site visits at Mexican driver training, testing, and licensing locations prior to beginning the pilot program to review Mexico's on-going compliance with the terms of the current MOU. The Agency agreed to post reports of these visits on the FMCSA pilot program Web site at <http://www.fmcsa.dot.gov/intl-programs/trucking/Trucking-Program.aspx>. The Agency also added copies of the 1991 MOU regarding CDL reciprocity to the docket for the pilot program.

This notice is provided to summarize the results of the site visits and make interested parties aware that the report has been posted on the pilot program Web site and added to the docket for this pilot program.

**ADDRESSES:** You may search background documents or comments to the docket for this notice, identified by docket number FMCSA-2011-0097, by visiting the:

- *eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for reviewing documents and comments. Regulations.gov is available electronically 24 hours each day, 365 days a year; or

- *DOT Docket Room:* Room W12-140 on the ground floor of the DOT Headquarters Building at 1200 New Jersey Avenue, SE., Washington, DC 20590 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>.

**FOR FURTHER INFORMATION CONTACT:** Marcelo Perez, FMCSA, North American Borders Division, 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:**

### Background

In FMCSA's April Notice (76 FR 20807) proposing the requirements for the United States-Mexico cross border long-haul trucking pilot program, the Agency explained that the Secretary of Transportation will accept only three areas of Mexican regulations as being equivalent to U.S. regulations. One of these areas is the set of regulations governing the licensing requirements for the operation of commercial motor vehicles (CMVs). The United States' acceptance of a Mexican LF for CMV operations in the United States dates back to November 21, 1991, when the Federal Highway Administrator, who oversaw CMVs at the time, determined that the Mexican LF is equivalent to a CDL issued by a State in the United States, revised the Federal motor carrier safety regulations to recognize the Mexican LF, and entered into an MOU with Mexico that memorialized the equivalency findings. In its April Notice, FMCSA explained that the Agency is in the process of updating this MOU.

As part of this process, on February 17, 2011, representatives from FMCSA, the Commercial Vehicle Safety Alliance 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 addition, in the Agency's July Notice (76 FR 40420), FMCSA recognized concerns about the on-going acceptance of the existing CDL MOU. It committed to additional site visits to Mexican driver training, testing, and licensing locations prior to beginning the pilot program to review Mexico's on-going compliance with the terms of the current MOU. The Agency agreed to post reports of these visits on the FMCSA pilot program Web site at <http://www.fmcsa.dot.gov/intl-programs/trucking/Trucking-Program.aspx>. The Agency also added the 1991 MOU regarding CDL reciprocity to the docket for the pilot program.

### The MOU Testing Requirements

The MOU requires that before obtaining an LF, a driver must pass a knowledge test. The areas covered in

that test must be comparable to those in 49 CFR part 383. In addition, the test must have at least 80 questions and a driver must have a minimum score of 80 percent to pass. The tests must be administered separately for each LF class. The MOU also requires that before obtaining an LF, a driver must pass a skills test that is comparable to that in 49 CFR part 383. The skills test must be given in a CMV that is representative of the LF class of license sought. Lastly, the skills test must be conducted in on-street or a combination of on/off street conditions.

During the review process, FMCSA learned that until April 21, 2010, commercial driver's license testing was conducted by both the Government of Mexico's Secretaria de Comunicaciones y Transportes (SCT) and private Mexican training centers. Since April 21, 2010, however, a driver must take his/her test at a private training center rather than directly from SCT. As a result, while some Mexican drivers have LFs based on testing from SCT, others have LFs based on testing by private training centers.

### SCT Testing

FMCSA reviewed the database of questions SCT used in its tests and confirmed that it covered the required subject matter. FMCSA also confirmed the number of questions on the SCT test, that SCT imposed the required passing rate of 80 percent, that SCT conducted skills tests in representative vehicles, and that a portion of SCT skills test included a demonstration of skills on the highway. Therefore, FMCSA is confident that SCT-issued tests are in compliance with the CDL MOU.

### Training Center Testing

Per SCT, there are 204 SCT-certified training schools for first issuance LFs in Mexico. Similar to the United States, some of the certified training schools are public and others are training centers run by trucking companies. Representatives from FMCSA visited nine training centers in Mexico in Nuevo Laredo, Tultitlan, Veracruz, Guadalajara, Tijuana (two schools), Monterrey, Tlaxcala and Mexico City. FMCSA selected these cities based on the number of international LFs issued and renewed in these locations, the number of cargo drivers trained in the cities, the number of training centers they cover, the number of LFs from the cities that are verified in the United States via the Commercial Driver's License Information System check, and their general populations. Other factors considered in selecting specific locations included the number of main

trade corridors linking each location, their geographical position, and proximity to the U.S. border. The Tlaxcala training center was selected to represent training centers outside of large urban areas in Mexico.

Prior to the visits, FMCSA requested from SCT a list of drivers who were trained at the centers between July 2010 and June 2011. The drivers selected were first time LF applicants for an LF Class B international license. The list included close to 30,000 drivers. The review team randomly selected and reviewed driver files at each of the training centers and the SCT field offices to determine compliance with the requirements of the MOU. The review team visited each training center to document whether drivers trained and tested there had to pass a knowledge and skills test as prescribed in the MOU. The review team also visited the SCT Field Office corresponding to each of the training centers. The reviewers confirmed that drivers were licensed to operate the same class of vehicles on which they were trained.

Based on its review of the nine schools, FMCSA determined that while the schools were close to full compliance with the terms of the MOU, there are improvements needed in the schools' testing to ensure consistent compliance. Specifically, FMCSA discovered two schools that had passing scores below the required 80 percent threshold; one school with 71 questions on its exam; and several schools that missed one or two of the required 20 subject matter areas. The report detailing the site visits is available at the Agency's Web site for the pilot program at <http://www.fmcsa.dot.gov/intl-programs/trucking/Trucking-Program.aspx>. In addition, the report has been added to the docket for the pilot program.

FMCSA shared the results of the report with SCT. SCT has committed to sending out information to all of the testing centers, reminding them of the MOU requirements and to requiring corrective action from the testing centers visited. In addition, in six months, FMCSA will be revisiting the training centers reviewed in the report as well as additional sites to confirm compliance with the MOU.

FMCSA does not believe that the findings described above compel any modifications to the pilot program's driver qualification standards established in the MOU. To implement the program in a manner that will ensure compliance with those standards and the safety of drivers seeking to participate in the pilot program, the

Agency will approve only those drivers who were tested by SCT. If a driver's original test was conducted by a private training center rather than by SCT, the driver will be required to be retested by SCT before he/she may be approved for the pilot program. SCT has agreed to conduct such testing for the pilot program participant drivers.

Issued on: October 6, 2011.

**Anne S. Ferro,**  
Administrator.

[FR Doc. 2011-26442 Filed 10-7-11; 11:15 am]  
BILLING CODE 4910-EX-P

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Federal Transit Administration

#### Environmental Impact Statement, Tappan Zee Bridge/I-287 Corridor Project (Rockland and Westchester Counties, New York)

**AGENCY:** Federal Highway Administration (FHWA), Federal Transit Administration (FTA), United States Department of Transportation (USDOT).

**ACTION:** Rescinded Notice of Intent.

**SUMMARY:** The FHWA and FTA are issuing this rescinded notice to advise the public that the FHWA and FTA will not be preparing an Environmental Impact Statement (EIS) for the proposed Tappan Zee Bridge/I-287 Corridor project involving approximately 30 miles of Interstate 287 between Hillburn/Suffern, Rockland County, New York and Port Chester, Westchester County, New York including the Tappan Zee Bridge over the Hudson River. The Tappan Zee Bridge/I-287 Corridor project considered alternatives for highway, bridge, and transit improvements along the 30-mile Interstate 287 corridor. A Notice of Intent (NOI) to prepare an Alternatives Analysis (AA) and EIS was published in the **Federal Register** on December 23, 2002. A Revised NOI to prepare a tiered EIS was published in the **Federal Register** on February 14, 2008.

**FOR FURTHER INFORMATION CONTACT:** Michael P. Anderson, Project Director, New York State Department of Transportation, 4 Burnett Boulevard, Poughkeepsie, New York 12603, Telephone: 518-810-9864; Jonathan McDade, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 7th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 431-4127; or

Anthony Carr, Region II Acting Administrator, Federal Transit Administration, One Bowling Green, Room 429, New York, New York 10004, Telephone: (212) 668-2170.

**SUPPLEMENTARY INFORMATION:** On December 23, 2002, the FHWA and FTA, in cooperation with the New York State Thruway Authority (NYSTA) and Metro-North Commuter Railroad, a subsidiary of the Metropolitan Transportation Authority (MTA/MNR) issued an Notice of Intent (NOI) to prepare an Alternatives Analysis (AA) and Environmental Impact Statement (EIS) for the I-287 Corridor in Rockland and Westchester Counties, New York. The AA explored a number of options to rehabilitate or replace the Tappan Zee Bridge over the Hudson River and to provide new transit service between Rockland and Westchester Counties with continuing service to New York City.

In February 2008, FHWA and FTA issued a revised NOI to advise the public of lead agency roles; outline how the provisions of SAFETEA-LU 6002 would be met; update interested parties regarding the approach to prepare and EIS; provide updated information on the proposed project, purpose and need; and range of alternatives; and re-invite participation in project scoping and announce the dates and announce the dates and times for public scoping meetings. The revised NOI announced that a Tiered EIS would be prepared to assess alternatives developed and advanced for further study. The Tiered EIS would include a Tier 1 transit analysis of general alignment and mode choice while simultaneously assessing site specific impacts, cost, and mitigation measures in a Tier 2 EIS for bridge and highway elements of the project. The February 14, 2008 NOI also identified the New York State Department of Transportation (NYSDOT) as another sponsoring agency for the NEPA review and the State project manager.

Because of the current economic realities which severely limit financing capability, FHWA, NYSTA, and NYSDOT propose to terminate the Tappan Zee Bridge/I-287 Corridor Tiered EIS and advance a project that will address the needs of the Tappan Zee Hudson River crossing alone. Transit improvements will not be considered.

The new project will be as analyzed in a new EIS that considers alternatives for the Hudson River crossing between Rockland and Westchester Counties, New York. Prior completed studies will be used to inform the new EIS process

and all reasonable alternatives under consideration for the project would not preclude cross-Hudson commuter rail and bus rapid transit services in the future.

FHWA and FTA will terminate efforts to secure a Tier 1 Record of Decision on the transit improvements, and would advance the corridor and transit improvements through appropriate planning and environmental studies in the future as circumstances and finances dictate. Any such future action will be progressed under a separate environmental review, in accordance with all applicable laws and regulations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: September 26, 2011.

**Jonathan D. McDade,**  
New York Division Administrator, Federal Highway Administration.

**Anthony Carr,**  
Region II Acting Administrator, Federal Transit Administration.

[FR Doc. 2011-26489 Filed 10-11-11; 8:45 am]  
BILLING CODE 4910-22-P

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### Notice of Delays in Processing of Special Permits Applications

**AGENCY:** Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of Applications Delayed more than 180 days.

**SUMMARY:** In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

**FOR FURTHER INFORMATION CONTACT:** Ryan Paquet, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH-30, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001, (202) 366-4535.

# APPENDIX I – MOTOR CARRIER SAFETY ADVISORY COMMITTEE LETTER



November 10, 2014

The Honorable T. F. Scott Darling, III  
Acting Administrator  
Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Dear Administrator Darling:

In August 2011, the Federal Motor Carrier Safety Administration (FMCSA) tasked the Motor Carrier Safety Advisory Committee (MCSAC) with assessing the safety record of participating Mexico-domiciled motor carriers in the Long-Haul Cross Border Trucking Pilot Program (pilot program) in Task 11-03. FMCSA requested that the MCSAC form a subcommittee to serve as the monitoring Federal advisory committee for the pilot program and invite the Administrator of Mexico's federal motor carrier agency (Dirección General de Autotransporte Federal) or his designee to participate in meetings in a nonvoting advisory capacity. Director Federico Dominguez Zuloaga attended the July 28, 2014, subcommittee meeting and presented information on the regulation of the Mexican commercial motor vehicle industry.

The Cross Border Subcommittee (Subcommittee) met in public meetings to discuss the Task and advise FMCSA concerning designated tasks related to the program on August 31, 2011, May 23, 2012, August 27, 2012, May 21, 2014, and July 28, 2014. On July 28, 2014, the Subcommittee developed a report containing its recommendations, which it submitted to the MCSAC for its consideration. In an October 28, 2014, public meeting the MCSAC deliberated on the Subcommittee's recommendations and is forwarding the Subcommittee's report as the MCSAC recommendation on Task 11-03.

I respectfully submit this report to FMCSA for its consideration.

Sincerely,

//signed//

Stephen C. Owings  
Chairman, Motor Carrier Safety Advisory Committee

Enclosure

**MCSAC Task 11-03: Oversight of the Long-Haul Cross Border Trucking Pilot Program Subcommittee Report to the MCSAC**

Introduction

In Task 11-03, FMCSA requested that the MCSAC form a subcommittee to serve as the monitoring Federal advisory committee for the pilot program. Specifically, FMCSA requested that MCSAC and the Subcommittee:

- Assess the safety record of participating Mexico-domiciled motor carriers;
- Continue to advise FMCSA concerning designated tasks related to the pilot program; and
- Issue a final report addressing whether FMCSA conducted the pilot program in a manner consistent with the objectives outlined in its April 2011 Federal Register Notice.

On April 13, 2011, FMCSA published a Federal Register notice in which it announced its proposal for the initiation of a United States-Mexico cross-border long-haul 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, consistent with the North American Free Trade Agreement (NAFTA). The April 2011 and subsequent Federal Register notices delineated several objectives of the pilot program. Through data and information provided by FMCSA, the Subcommittee has assessed the safety record of participating Mexico-domiciled motor carriers and has considered information provided by the Administrator of Mexico's federal motor carrier agency (Dirección General de Autotransporte Federal).

The Subcommittee believes that FMCSA has achieved—or will achieve—each of the objectives outlined in the April 2011 and subsequent Federal Register notices, with the exception of the comments outlined below as a caveat to this Subcommittee conclusion. In summary, the Subcommittee concludes that FMCSA has done what the Agency has said it will do as part of the pilot program. However, the Subcommittee questions whether the quantity and quality of the data collected from carriers participating in the program is sufficient to draw an appropriate conclusion about the pilot program. As the majority of inspection and violation data was obtained from four Mexico-domiciled carrier pilot program participants that drove primarily within the commercial border zones, the data appears insufficient to determine whether Mexican-domiciled motor carriers generally operating beyond the commercial zones would have similar safety records as U.S.-domiciled motor carriers.

**I. April 13, 2011, Federal Register Notice<sup>1</sup> Objectives**

**A. Pilot Program Description**

1. **Federal Register Statement:** During Stage 1 of the pilot program, the motor carrier's vehicles and drivers would be inspected each time they enter the United States for at least 3 months (76 FR 20807, 20810).
2. **Subcommittee Comment:** While the vast majority of vehicles were inspected at each border crossing during Stage 1, FMCSA acknowledged that not all vehicles were inspected.

<sup>1</sup> *Pilot Program on NAFTA Long-Haul Trucking Provisions; Notice; Request for Public Comment*, 76 FR 20807 (April 13, 2011).

Task 11-03 Long Haul Cross Border Pilot Program Subcommittee Report

- B. Pre-Authorization Safety Audit (PASA)
  - 1. Subcommittee Comments: The Subcommittee believes that each of the PASA-related objectives has been met but has concerns about the lack of disclosure of affiliated motor carriers by motor carrier pilot program applicants in the PASA process.
    - a. FMCSA asked Mexican-domiciled motor carriers to list affiliated motor carriers on the pilot program application and attempted to join applications where it appeared that two motor carriers were the same company.
    - b. Multiple pilot program applicants did not disclose an affiliate that they should have on the application. FMCSA discovered the lack of disclosure in each of the applications and corrected the data.
- C. Monitoring, Oversight, and Enforcement
  - 1. Federal Register Statement: FMCSA would equip each vehicle approved for use by Mexico-domiciled carriers in the pilot program with an electronic monitoring device (ELD). As part of participating in the pilot program, the ELD must be operational on the vehicle throughout the duration of the pilot program (76 FR 20807, 20811).
  - 2. Subcommittee Comments:
    - a. Upon review of the ELD data, some violations were noted, which were largely form and manner violations.
    - b. All ELD data should have required annotations.
- D. List of Federal Motor Carrier Safety Laws and Regulations for which FMCSA will Accept Compliance with a Corresponding Mexican Law or Regulation
  - 1. Federal Register Statement: 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 hold (76 FR 20807, 20814).
  - 2. Subcommittee Comment: FMCSA was unable to get copies of records from individual Mexican States.
- E. Program Evaluation
  - 1. Federal Register Statement: 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. Using performance metrics described in the notice, 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 (76 FR 20807, 20817).
  - 2. Subcommittee Comments:
    - a. The Subcommittee is concerned that the data obtained during the pilot program is insufficient to evaluate the safety performance of the actual Mexican commercial motor vehicle (CMV) carriers that might be operating in the United States moving forward.
      - i. The concern is that the sample of Mexican-domiciled motor carriers evaluated in the pilot program is not necessarily representative of other Mexican motor carriers.

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- ii. Additionally, the majority of inspections were conducted at the border, which is more anticipated by a motor carrier. Only 5 percent of inspections were conducted beyond the commercial zones.
  - b. Another concern is that FMCSA and State enforcement would not be able to scale the same type of monitoring, compliance, and enforcement for a larger amount of Mexican carriers operating in the United States.
- F. Representation of Data from the Pilot Study
  - 1. Federal Register Statement: If the 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. The Agency would conduct a concurrent study of the 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 (76 FR 20807, 20817).
  - 2. Subcommittee Comments:
    - a. Most data obtained in the program was obtained from a few pilot program participants.
      - i. The majority of the data collected in the pilot program is on 2 companies (GCC Transportes and STIL), one of which joined the program in June 2013.
      - ii. Ninety three percent of inspections were for 4 different Mexican-domiciled motor carrier pilot program participants. The Subcommittee questions why only 2 pilot program participants made the majority of the crossings.
    - b. The Subcommittee is concerned that the 15 Mexican-domiciled motor carrier participants in the pilot program, of which 13 are currently active, are not necessarily representative of all Mexican motor carriers.

**II. July 8, 2011, Federal Register Notice<sup>2</sup> Objectives**

- A. Equivalency of United States-Mexico Laws and Regulations Governing Safety
  - 1. Federal Register Statement: The United States will address the changes in the U.S. commercial driver's license (CDL) regulations with Mexico during the updating of the 1991 CDL Memorandum of Understanding (MOU) that is currently underway (76 FR 40420, 40428).
    - a. Subcommittee Comment: FMCSA continues to work with Mexico on this. The updating of the 1991 CDL MOU will not be completed before the conclusion of the cross-border pilot program.
  - 2. Federal Register Statement: FMCSA will review drivers' Mexican State commercial driver's license records for violations in a personal vehicle that would result in a suspension or revocation in the United States (76 FR 40420, 40428-40429).
    - a. Subcommittee Comment: FMCSA has attempted to do this but cannot obtain this information from the Mexican States.

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<sup>2</sup> *Pilot Program on the North American Free Trade Agreement (NAFTA) Long-Haul Trucking Provisions; Notice; Response to Public Comments*, 76 FR 40420 (July 8, 2011).

B. Statistical Validity

1. Federal Register Statement: FMCSA plans to evaluate safety based on the following metrics: vehicle out of service (OOS) rate, vehicle violation rate, driver OOS rate, driver violation rate, safety audit pass rate, crash rate, specific violation rates (traffic enforcement, driver fitness, hours of service) (76 FR 40420, 40428).
2. Subcommittee Comments:
  - a. Pilot project data collected and provided to the Subcommittee by FMCSA on July 28, 2014, appear to be insufficient for analysis of long-haul trucking operations in the United States by Mexico-domiciled motor carriers for the following reasons, among others: very few (15) Mexico-domiciled motor carriers participated in the 3-year program and few of those were in the pilot program for more than 1 year; most of the vehicles and motor carriers in the pilot program did not engage in long-haul operations beyond the border commercial zones; the inspection data was collected largely at the border during border crossings when pilot program participants expected to be inspected; and the overwhelming majority of the inspections were conducted on just two motor carriers.
  - b. Specific flaws in the collected data include the following:
    - i. Of the reported 5,046 inspections in the program, all but 4 were conducted at the U.S.-Mexico border when the participating CMV was entering the United States and at a time and place when drivers and motor carriers anticipated being inspected.
    - ii. These border inspections took place near the start of each trip.
    - iii. Only 5 percent of the cross-border trips (1,150 out of 20,918) in the pilot program involved a CMV that travelled beyond the border zone.
    - iv. Of the 1,150 trips involving participating trucks with a destination beyond the border zone, 728 safety inspections (63 percent) were conducted, and all but 9 of these inspections were conducted at the border.
    - v. Of the total 5,046 inspections conducted, 82.4 percent (4,158), were conducted on CMVs of just 2 of the participating motor carriers.
    - vi. Of the 5,046 inspections conducted the vast majority, 81.5 percent (4,110), was Level III (driver only) inspections; only 18.5 percent was Level I or II inspections.
    - vii. Mileage data collected in the program (1.2 million vehicle miles travelled) is insufficient to render any valid statistical analysis regarding crash rate.
      - (A) There has been only one crash involving a pilot program participant since the inception of the program.
  - c. For these reasons, the Subcommittee is concerned that the number of inspections conducted throughout the pilot program (although greater than 4,100, the target number of inspections stated in the April 2011 Federal Register notice) is insufficient to evaluate the program (i.e., comparing

OOS rates from the pilot program to OOS rates for carriers domiciled in the United States).

**III. General Subcommittee Comments and Concerns**

- A. The Subcommittee believes that although FMCSA may have done most of the things they said they were going to do in the relevant Federal Register notices, the data do not reflect whether the participants are representative of what would happen if the border was generally opened.
- B. The Subcommittee has concerns that the pilot program attracted very few Mexico-domiciled motor carriers. FMCSA provided information regarding how many carriers applied to participate in the pilot program versus how many were accepted.
- C. Some Subcommittee members expressed concern that the vehicles and drivers participating in the pilot program were the best drivers and vehicles for that motor carrier and that less safe vehicles and drivers would be sent into the United States beyond the commercial zones after the pilot program ended and standard authority was granted to all vehicles and drivers for the pilot program carriers.
  - 1. One Mexico-domiciled motor carrier stated to the Subcommittee that it did place its best vehicles and drivers into the pilot program and that it would continue to send its best vehicles and drivers across the U.S. border if it received standard authority following the pilot.
- D. The agency has data showing that more than 1,800 Mexican-domiciled carriers who are authorized to operate within the United States under previous program authority (1,033 certificate carriers<sup>3</sup> and 711 enterprise carriers<sup>4</sup>) received 15,256 (certificate) + 64,265 (enterprise) driver inspections and 10,178 (certificate) + 42,985 (enterprise) vehicle inspections and have a better out-of-service rate than U.S. carriers. Certificate and enterprise carriers are monitored at the same level or more leniently than how FMCSA is proposing to treat carriers under the continuation of the current pilot program.

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<sup>3</sup> Certificate carriers are Mexican-domiciled private carriers transporting their own goods or exempt commodities (e.g., produce, farm goods). From 1987 to 2002, such carriers were able to obtain certificates that allowed them to operate under routes going to specific places beyond the commercial zones.

<sup>4</sup> Enterprise carriers are Mexican-owned, U.S.-based motor carriers that transport for-hire. Post-NAFTA, these carriers may transport international freight only but may operate beyond the commercial zones.

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*Office of Inspector General*  
***Audit Report***

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**FMCSA ADEQUATELY MONITORED ITS NAFTA  
CROSS-BORDER TRUCKING PILOT PROGRAM BUT  
LACKED A REPRESENTATIVE SAMPLE TO PROJECT  
OVERALL SAFETY PERFORMANCE**

*Federal Motor Carrier Safety Administration*

*Report Number: ST-2015-014*

*Date Issued: December 10, 2014*



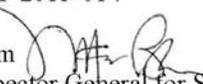


# Memorandum

U.S. Department of  
Transportation  
Office of the Secretary  
of Transportation  
Office of Inspector General

Subject: **ACTION:** FMCSA Adequately Monitored Its NAFTA Cross-Border Trucking Pilot Program but Lacked a Representative Sample To Project Overall Safety Performance  
Federal Motor Carrier Safety Administration  
Report No. ST-2015-014

Date: December 10, 2014

From: Mitchell Behm   
Assistant Inspector General for Surface  
Transportation Audits

Reply to  
Attn. of: JA-30

To: Acting Federal Motor Carrier Safety Administrator

Under the 1992 North American Free Trade Agreement (NAFTA), the United States and Mexico agreed to long-haul cross-border transportation of cargo and passengers between the two countries. Congress prohibited the Federal Motor Carrier Safety Administration (FMCSA) from processing Mexico-domiciled motor carrier applications to operate beyond United States commercial zones<sup>1</sup> until certain requirements are met and a pilot program for granting long-haul authority to Mexico-domiciled motor carriers has evaluated the potential impact on safety.

Under Section 6901 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act (the act),<sup>2</sup> we were required to (1) provide an initial review verifying the pilot program complies with requirements set forth in Section 350(a) of the Department of Transportation and Related Agencies Appropriation Act,<sup>3</sup> (2) monitor the program and provide an interim report 6 months after initiation, and (3) provide a final report within 60 days after the program's conclusion. FMCSA formally initiated the pilot program on October 14, 2011, and ended the program on October 10, 2014.

<sup>1</sup> Commercial zones generally extend up to 25 miles north of United States border municipalities in California, New Mexico, and Texas (or 75 miles in Arizona).

<sup>2</sup> Pub. L. No. 110-28, Title VI, Ch. 9, § 6901 (2007).

<sup>3</sup> Pub. L. No. 107-87, Title I, § 350(a) (2001).

Our audit objectives were to determine whether (1) Federal and State monitoring and enforcement activities are sufficient to ensure that participants in the pilot program are in compliance with all applicable laws and regulations, (2) the Department has established sufficient mechanisms to determine whether the pilot program is having any adverse effects on motor carrier safety, and (3) the pilot program consists of an adequate and representative sample of Mexico-domiciled carriers likely to engage in cross-border operations beyond the United States municipalities and commercial zones on the United States-Mexico border.

We conducted this audit in accordance with generally accepted Government auditing standards. In consultation with our statistician, we analyzed FMCSA's pilot program data, such as pilot program carrier business types and fleet size, crash and out-of-service<sup>4</sup> rates, participant border crossings, truck and driver inspections, and other relevant information. We evaluated FMCSA's mechanisms for providing oversight of the pilot program, observed border inspections of pilot program participants, and interviewed FMCSA personnel located in its Headquarters offices and select border crossings. Exhibit A provides further details on our scope and methodology.

## **BACKGROUND**

FMCSA initiated the pilot program to test and demonstrate Mexico-domiciled motor carriers' ability to operate safely beyond the United States-Mexico border. Passenger and hazardous materials carriers were not allowed to participate in the program. To receive pilot program provisional motor carrier certificates of registration, carriers had to pass a safety and security vetting process and undergo a Pre-Authorization Safety Audit (PASA). A PASA required the carrier to demonstrate that it had (1) a controlled substance and alcohol testing program, (2) a system for complying with hours-of-service requirements, (3) proof of insurance or ability to obtain it, (4) records of periodic inspections of vehicles used in the United States, and (5) qualified drivers for operations in the United States.

The participants were also required to progress through stages of inspections and comply with United States laws and regulations governing motor carrier safety, customs and immigration, vehicle registration and taxation, and fuel taxation. Additionally, before 18 months<sup>5</sup> of pilot program operations, the carriers had to receive a satisfactory rating from a compliance review. See table 1 for a description of the different stages of operating authority for carriers that participated in the pilot program.

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<sup>4</sup> A driver placed out of service may not operate a commercial motor vehicle until the reason for the out-of-service order is remedied. Similarly, a commercial vehicle placed out of service may not be operated until all repairs required by the out-of-service order are satisfactorily completed.

<sup>5</sup> In calculating the 18 months under the current pilot program, carriers could receive credit for time operated during FMCSA's 2007–2009 demonstration project.

**Table 1. Stages of Operating Authorities for Pilot Program Participant Carriers**

Pilot Program Provisional Motor Carrier Certificate of Registration	<p><i>Stage 1:</i> Participant carriers with pilot program provisional motor carrier certificates of registration were inspected each time they entered the United States for at least 3 months of participation or until they completed at least three inspections.</p> <p><i>Stage 2:</i> After the first 3 months, participant carriers were monitored and inspected at a rate comparable to other Mexico-domiciled motor carriers that cross the United States-Mexico border until they reached a total of 18 months of participation. To proceed to stage 3, a carrier must have received a satisfactory safety rating during its compliance review and have no pending enforcement or safety improvement actions.</p>
Pilot Program Permanent Motor Carrier Certificate of Registration	<p><i>Stage 3:</i> To obtain pilot program permanent motor carrier certificates of registration, participant carriers must comply with all Federal Motor Carrier Safety Regulations (FMCSR) and renew their Commercial Vehicle Safety Alliance (CVSA) decals every 90 days for 3 years.</p>
Standard Motor Carrier Operating Authority Registration	<p><i>Post-Pilot Program:</i> Upon completion of the pilot program, pilot participants were eligible for standard motor carrier operating authority, similar to that of U.S.-domiciled motor carriers but with significant restrictions and requirements, such as limitations to international cargo and required inspection decals.</p>
Provisional Motor Carrier Operating Authority Registration	<p><i>Post Pilot Program:</i> Upon completion of the pilot program, pilot participants with pilot program provisional motor carrier certificates of registration were eligible to be converted to provisional motor carrier operating authority. These motor carriers must undergo a compliance review, receive a satisfactory rating, and have no pending enforcement or safety improvement actions before being considered eligible to receive a standard motor carrier operating authority.</p>

Source: Office of Inspector General (OIG) summary of operating authorities, verified by FMCSA.

Our August 2011 initial report<sup>6</sup> on the pilot program found that FMCSA had not (1) finalized its process for conducting 50 percent of PASAs and compliance reviews on site in Mexico; (2) issued site-specific plans for checking drivers and trucks at the border; (3) established a system to verify driver and truck eligibility for the pilot program; (4) issued an implementation plan or acquired electronic monitoring devices for use in the pilot program; and (5) conducted pilot program training for inspection personnel at the border and within the United States. After our initial audit, the Department submitted a report to Congress detailing its actions to address the issues we raised.

<sup>6</sup> *FMCSA Generally Complies With Statutory Requirements, but Actions Are Needed Prior To Initiating Its NAFTA Cross-Border Trucking Pilot Program* (OIG Report Number MH-2011-161), Aug. 19, 2011. OIG reports are available on our Web site at: [www.oig.dot.gov](http://www.oig.dot.gov).

In August 2012, we issued an interim report<sup>7</sup> on the status of FMCSA's pilot program. We found that low participation in the pilot program put FMCSA at risk of potentially not meeting its goals for providing an adequate and representative sample of Mexico-domiciled carriers and inspections necessary to assess the pilot program's impact on motor carrier safety, and would prohibit us from making reliable statistical projections. Additionally, FMCSA's oversight mechanisms did not ensure full compliance with pilot program requirements, and certain monitoring mechanisms were still in development at the time of our interim audit.

## RESULTS IN BRIEF

During the course of the pilot program, FMCSA established sufficient monitoring and enforcement activities to comply with the 34 distinct requirements set forth in Section 350(a).<sup>8</sup> FMCSA was not able to fully comply with one requirement for conducting 50 percent of PASAs on site in Mexico. While the Agency conducted only 38 percent of the PASAs on site, concerns for the safety and security of personnel conducting operations prevented full compliance. Therefore, we determined that FMCSA made reasonable efforts to conduct PASAs in Mexico. Additionally, FMCSA took reasonable actions to implement the nine recommendations we made in our initial and interim pilot program audits for improving its monitoring and enforcement activities to ensure that pilot program participants comply with safety laws and regulations.

FMCSA established a sufficient mechanism, through an internal analysis of carrier safety data, to determine whether the pilot program had adverse effects on motor carrier safety. FMCSA reviewed carrier safety data—such as vehicle and driver out-of-service rates, crash rates, and safety ratings—to evaluate the impact of the pilot program on safety. The Agency concluded that pilot program participant carriers, as well as Mexico-domiciled and Mexican-owned carriers with existing authority to operate in the United States, performed no worse than United States and Canadian motor carriers. Accordingly, at the end of the pilot program, FMCSA converted 9 of 13 participant carriers that had pilot program permanent motor carrier certificates of registration to standard motor carrier operating authority. FMCSA also converted the remaining four participant carriers that had pilot program provisional motor carrier certificates of registration to provisional motor carrier operating authority pending successful completion of a compliance review. We confirmed FMCSA's conclusions regarding participant carriers' safety performance.

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<sup>7</sup> *Increased Participation and Improved Oversight Mechanisms Would Benefit the NAFTA Pilot Program* (OIG Report Number MH-2012-169), Aug. 16, 2012.

<sup>8</sup> See exhibit B for a complete list of Section 350(a) requirements.

FMCSA lacked an adequate number of Mexico-domiciled pilot program carriers to yield statistically valid findings for the pilot program. According to FMCSA officials, the termination of the previous demonstration project, the temporary status of the pilot program, increased interest in existing types of operating authorities, and lack of established business relationships in the United States resulted in less interest in the pilot program. Because the pilot program lacked an adequate number of participants, we could not determine with confidence whether the 15 carriers are representative.<sup>9</sup> Without being able to determine the representativeness of the 15 carriers, one cannot project the safety performance for the population of Mexico-domiciled carriers that may qualify for long-haul operating authority in the future.

We are not making recommendations to improve FMCSA's oversight of the pilot program at this time, as FMCSA formally ended the pilot program on October 10, 2014.

#### **FMCSA IMPLEMENTED ADEQUATE PILOT PROGRAM MONITORING AND ENFORCEMENT ACTIVITIES TO ENSURE CARRIER COMPLIANCE WITH LAWS AND REGULATIONS**

FMCSA established sufficient monitoring and enforcement activities for its pilot program to ensure compliance with Section 350(a) requirements and to address recommendations from our previous audits of the pilot program. In our August 2011 initial audit and August 2012 interim audit, we reported that FMCSA's monitoring and enforcement activities did not ensure full compliance with pilot program requirements and that FMCSA was still developing some oversight mechanisms. During this current review, we determined that FMCSA took reasonable actions to implement all nine recommendations we made in our initial and interim reports for improving FMCSA's monitoring and enforcement activities (see table 2 for a list of our prior recommendations).

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<sup>9</sup> A total of 15 carriers enrolled in the pilot program. However, at the end of the pilot program, one carrier had withdrawn, and one carrier had its pilot program operating authority revoked, resulting in only 13 participant carriers.

**Table 2. OIG Pilot Program Recommendations****Initial Report (August 2011)**

Finalize plans for how FMCSA will comply with Section 350(a) requirements to conduct half of PASAs and compliance reviews in Mexico.

Issue site-specific plans, or an alternative plan, for coordinating with United States Customs and Border Protection and the States to ensure that pilot program drivers and trucks are inspected at the border.

Establish a system to verify driver and truck eligibility for the pilot program.

Issue an implementation plan for using electronic monitoring devices in the pilot program.

Conduct pilot program training for inspection and enforcement personnel at the border and within the United States.

**Interim Report (August 2012)**

Revise FMCSA's traffic and road sign testing policy and procedures to (a) require English responses to questions about traffic and road signs, (b) require testing of all 21 traffic and road signs used for the PASA test, (c) add a height clearance sign to the traffic and road sign test, and (d) provide training and guidance on traffic and road sign testing to all enforcement officials.

Revise FMCSA's quality assurance procedures for PASAs to ensure that field supervisors and new entrant specialists validate the Agency's verification of Secretaria de Comunicaciones y Transporte (SCT)-tested drivers and ensure accuracy of drug and alcohol statistical summary reports and the accuracy of random drug and alcohol testing pools before approving PASAs.

Revise FMCSA's pilot program monitoring plan to include proactive controls such as periodic checks of electronic monitoring data quality and reporting accuracy.

When appropriate program participation warrants, complete the development of mechanisms for detecting cabotage violations as called for in the electronic monitoring contract.

*Source: FMCSA Generally Complies With Statutory Requirements, but Actions Are Needed Prior To Initiating Its NAFTA Cross-Border Trucking Pilot Program (OIG Report Number MH-2011-161), Aug. 19, 2011; Increased Participation and Improved Oversight Mechanisms Would Benefit the NAFTA Pilot Program (OIG Report Number MH-2012-169), Aug. 16, 2012.*

FMCSA substantially complied with the 34 distinct requirements set forth in Section 350(a)<sup>10</sup> as a result of these improved monitoring and enforcement efforts. For example:

- In October 2011, FMCSA issued a plan to its field staff for scheduling PASAs and pilot program carrier compliance reviews, which was intended to help comply with the requirement that 50 percent of these reviews be conducted on site in Mexico. At the end of the pilot program, FMCSA had conducted 7 of

<sup>10</sup> See exhibit B for a complete list of Section 350(a) requirements.

11 (64 percent) of compliance reviews on site in Mexico. However, only 8 of 21 (38 percent) of PASAs were conducted on site in Mexico. According to FMCSA officials, concerns about the safety and security of its personnel prevented full compliance. In some areas where motor carriers were located, the State Department warned of significant organized crime activity, kidnappings, and homicides. In light of these concerns and associated travel restrictions, FMCSA deferred the scheduling of PASAs in Mexico. Our review determined that FMCSA made reasonable efforts to conduct PASAs in Mexico.

- In its 2011 report to Congress on the pilot program, FMCSA stated that it had developed an overall plan for coordinating with United States Customs and Border Protection and the States for inspecting drivers and trucks at the border. Instead of a formal coordination plan, FMCSA implemented an internal inspection policy and used the geo-fencing function<sup>11</sup> of its electronic monitoring devices to alert inspectors of approaching vehicles that required inspection. During our site visits to the border crossings, we confirmed this mechanism was working as designed.
- FMCSA installed electronic monitoring devices on pilot program trucks to monitor truck locations, travel times, and general travel patterns to monitor compliance with hours-of-service and prohibited point-to-point transportation<sup>12</sup> in the United States. We verified that the electronic monitoring devices were operational, that a process was in place to mitigate technical difficulties, and that FMCSA was utilizing the electronic monitoring system to identify approaching pilot program vehicles at both ports of entry visited. Although FMCSA had planned to require pilot program carriers to return the electronic monitoring devices, FMCSA officials told us that allowing the carriers to retain the deactivated equipment would be more cost-effective.
- In June 2012, FMCSA issued an updated PASA policy, including English Language Proficiency and traffic and road sign testing guidance. FMCSA provided training on the updated policy and guidance to its staff in August 2012. Although FMCSA did not conduct PASAs during our visits to the inspection sites, we reviewed the training materials and verified training logs to confirm that FMCSA staff had received the guidance.
- In May 2013, FMCSA updated its processes and procedures for conducting PASAs, including those for ensuring carrier compliance with drug and alcohol

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<sup>11</sup> FMCSA created a geo-fence, or virtual perimeter, at specific points at or near each border port of entry to electronically track pilot program vehicles approaching the ports of entry.

<sup>12</sup> Mexico-domiciled motor carriers are subject to Department of Homeland Security and Department of Transportation requirements and are prohibited from providing domestic point-to-point transportation while operating in the United States.

testing. We contacted eight drug and alcohol consortiums used by participant carriers and confirmed each carrier's enrollment during the pilot program.

- FMCSA established a sufficient process to monitor and identify potential cases of cabotage, or prohibited point-to-point transportation of domestic cargo wholly within the United States. During the pilot program, FMCSA staff reviewed electronic monitoring data reports to monitor and identify potential point-to-point rule violations. The Agency identified and investigated 35 potential violations by pilot program carriers but did not identify any actual violations. We reviewed FMCSA's investigation files and verified that its cabotage investigation process was working as designed.

### **FMCSA ESTABLISHED A SUFFICIENT MECHANISM TO DETERMINE THE PILOT PROGRAM PARTICIPANTS' IMPACT ON SAFETY**

FMCSA established a sufficient mechanism, an internal analysis of carrier safety data, to determine whether the pilot program had adverse effects on motor carrier safety. Our review confirmed FMCSA's conclusion that pilot program participants performed no worse than United States and Canadian motor carriers, as well as Mexico-domiciled and Mexican-owned motor carriers with existing authority to operate within the United States. Our review identified one concern that non-pilot program driver inspections were included in FMCSA's total inspection count, but these additional data were not used in its analysis of driver out-of-service rates and do not alter our conclusion that the participant carriers operated safely during the pilot program.

#### **Pilot Program Participants Performed No Worse Than Other Motor Carrier Groups**

FMCSA's internal analysis of carrier data found that pilot program participant carriers, as well as an estimated 1,000 Mexico-domiciled and Mexican-owned motor carriers with existing authority to operate within the United States, performed no worse than United States and Canadian carriers.<sup>13</sup> To evaluate the impact of the pilot program on safety, FMCSA reviewed carrier safety performance metrics—such as vehicle and driver out-of-service rates, inspections per truck, roadside violations, crash rates, and safety ratings—from the first 32 months of the pilot program (October 14, 2011 to June 20, 2014). During the pilot program, 15 carriers participated in the pilot program with 71 trucks and 56 drivers approved for long-haul operations. These participant carriers were inspected 5,091 times during the period of the preliminary analysis provided by

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<sup>13</sup> FMCSA's internal analysis combined United States and Canadian carriers into one comparison group.

FMCSA. In an effort to collect inspection rate and safety performance data that are comparable to those of non-pilot program carriers, FMCSA's analysis excluded inspections conducted while a carrier had a stage 1 pilot program provisional motor carrier certificate of registration—a period of at least 3 months during which carriers were required to be inspected each time they crossed the border. Because of this exclusion, FMCSA analyzed a total of 2,841 inspections of carriers with stage 2 pilot program provisional motor carrier certificates of registration and stage 3 pilot program permanent motor carrier certificates of registration—during which participant carriers were inspected at a frequency consistent with standard procedures at the southern border.

At the end of the pilot program, FMCSA administratively converted all participant carriers' operating authority. Specifically, FMCSA converted 9 of 13<sup>14</sup> participant carriers that had pilot program permanent motor carrier certificates of registration to standard motor carrier operating authority. FMCSA also converted the remaining four pilot program carriers that had pilot program provisional motor carrier certificates of registration to provisional motor carrier operating authority pending completion of a compliance review.

We conducted our own assessment of participant carriers' out-of-service, inspection, and crash rates, which confirmed FMCSA's conclusions regarding pilot program carriers' safety performance. Our analysis included inspections for the entire duration of the pilot program (October 14, 2011, to October 10, 2014).<sup>15</sup> We also compared the participant carriers' safety performance metrics to those of other motor carrier groups, such as United States, Canadian, certificate,<sup>16</sup> and enterprise carriers.<sup>17</sup> As table 3 shows, pilot program participant carriers had lower driver and vehicle out-of-service rates compared to United States, Canadian, certificate, and enterprise carriers.

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<sup>14</sup> A total of 15 carriers enrolled in the pilot program. However, at the end of the pilot program, 1 carrier had withdrawn, and 1 carrier had its pilot program operating authority revoked, resulting in only 13 participant carriers.

<sup>15</sup> FMCSA indicated that it is completing an analysis for the entire pilot program period, but this analysis had not been completed at the time of our audit.

<sup>16</sup> Certificate carriers are Mexico-domiciled companies owned or controlled by United States companies that transport exempt commodities beyond the border commercial zones. These carriers operate under Certificates of Registration obtained before the passage of the 2002 Interim Final Rules implementing NAFTA. FMCSA estimates that 271 certificate carriers currently have operating authority.

<sup>17</sup> Enterprise carriers are Mexican-owned companies domiciled in the United States. These carriers operate in the United States and transport cross-border international cargo that originates in or is destined for a foreign country. These carriers are subject to all United States, State, and local laws pertaining to motor carrier operations and their vehicles. FMCSA estimates that 813 enterprise carriers currently have operating authority.

**Table 3. OIG Analysis of Driver and Vehicle Out-of-Service Rates**

<b>Carrier Group</b>	<b>Driver Out-of-Service Rates (%)</b>	<b>Vehicle Out-of-Service Rates (%)</b>
Pilot program participants	0.2	8.9
United States carriers	5.3	22.0
Canadian carriers	3.7	12.5
Certificate carriers	1.7	18.0
Enterprise carriers	1.6	17.6

Source: FMCSA data from the Motor Carrier Management Information System from October 14, 2011, to October 10, 2014.

Table 4 shows that pilot program participant carriers were also subject to higher rates of inspection than comparable motor carrier groups.

**Table 4. OIG Analysis of Carrier Inspections and Inspection Rates**

<b>Carrier Group</b>	<b>Number of Inspections</b>	<b>Inspections Per Truck</b>
Pilot program participants	5,269	45.1*
United States carriers	14,403,547	2.3
Canadian carriers	474,887	2.4
Certificate carriers	31,819	7.9
Enterprise carriers	128,212	5.1

Source: FMCSA data from the Motor Carrier Management Information System from October 14, 2011, to October 10, 2014.

\* To confirm FMCSA's internal analysis, we calculated the pilot program participants' inspections per truck using the 2,841 stage 2 & 3 inspections.

We identified one reportable crash that occurred during the pilot program involving a participant carrier's truck. This crash occurred in San Diego, CA, on a private drive and involved a personal vehicle that veered out of its lane and hit the participant carrier's truck. We also identified nine crashes that involved participant carriers' non-pilot program trucks, all of which occurred within the commercial zones, but these crashes are outside the scope of our pilot program evaluation. We could not reasonably assess the impact of crashes on future carrier activity because FMCSA enrolled too few carriers in the program.

### **FMCSA's Analysis of Pilot Program Safety Included Non-Pilot Program Data but Demonstrates That Participants Operated Safely**

FMCSA's total count of pilot program inspections included those of non-pilot program drivers operating pilot program trucks in the commercial zone, but these additional data do not alter our conclusion that participant carriers operated safely during the pilot program. While observing a demonstration of FMCSA's electronic monitoring interface at the Otay Mesa, CA, port of entry, we noticed that a pilot program truck was operating without a pilot program-approved driver. FMCSA stated that it allowed participant carriers to use non-pilot program drivers when operating within the commercial zones, and that its analysis of pilot program vehicle out-of-service rates included inspection data for pilot program vehicles operated by non-pilot program drivers.

Before the pilot program started, FMCSA had projected that it would need at least 4,100 roadside inspections to obtain statistically valid results when detecting differences in violation rates between United States- and Mexico-domiciled carriers.<sup>18</sup> FMCSA reported a total of 5,545 inspections for the pilot program. Our review of FMCSA inspection data for the entire pilot program found that over 27 percent (1,525) of the 5,545 inspections involved pilot program trucks driven by non-pilot program drivers operating within the commercial zones. Out of these 1,525 inspections, 1,236 (81 percent) were Level III driver-only inspections,<sup>19</sup> which evaluated the non-pilot program drivers' safety fitness. If the 1,236 inspections of non-pilot program drivers are removed from the total number of inspections, then the pilot program yielded 4,309 inspections of pilot program trucks, which is still above FMCSA's target of 4,100 inspections. Still, because the pilot program was intended to test the safety of pilot program participant carriers conducting long-haul operations, the most useful inspection data for supporting the carriers' safety performance are data involving pilot program-approved drivers conducting long-haul operations with pilot program-approved trucks.

While FMCSA excluded the non-pilot program drivers from calculations of pilot program driver out-of-service rates, FMCSA officials explained that they wanted to include more data on the operational condition of pilot program trucks, including those operated by non-pilot program drivers. These additional inspections do not alter our conclusion that the 15 participants carriers operated safely during the pilot program.

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<sup>18</sup> According to FMCSA, a statistically valid result would be a difference in violation rate of 2 percentage points or greater, with 90-percent confidence.

<sup>19</sup> A Level III inspection is a driver/credential inspection, including an examination of the driver's license, medical examiner's certificate, record of duty status, and hours of service.

## **THE PILOT PROGRAM LACKED AN ADEQUATE SAMPLE TO PROJECT SAFETY PERFORMANCE OF LONG-HAUL OPERATIONS BY MEXICO-DOMICILED MOTOR CARRIERS**

FMCSA's pilot program lacked an adequate number of Mexico-domiciled participant carriers to yield statistically valid findings for the pilot program. Because FMCSA lacked an adequate number of participants, we could not determine with confidence whether the 15 carriers are representative. Without being able to determine the representativeness of the 15 carriers, one cannot project the safety performance for the population of Mexico-domiciled carriers that may qualify for long-haul operating authority in the future.

### **The Pilot Program Lacked an Adequate Number of Participant Carriers To Determine Whether the Sample Was Representative**

Although FMCSA made an effort to promote the 3-year pilot program, the number of participant carriers was not sufficient to yield statistically valid findings for the pilot program. During the program, 37 carriers applied for authority to participate. However, only 15 total carriers were granted permission to participate, and 2 of these 15 carriers either withdrew or had their pilot program operating authority revoked, resulting in only 13 participant carriers at the end of the pilot program. The act requires pilot program plans to have enough participants to yield statistically valid findings,<sup>20</sup> but the pilot program's sample of 15 carriers was considerably smaller than the 46 carriers that FMCSA originally estimated it would need.

FMCSA's April 13, 2011, pilot program proposal calculated that 46 participant carriers would be needed to achieve the target of 4,100 inspections within 3 years. FMCSA based this calculation on the assumption that pilot program participants would perform, on average, one long-haul border crossing per week per truck and would have, on average, two trucks participating in the pilot program. FMCSA also stated that if participating carriers performed more crossings per week or enrolled more vehicles, then fewer carriers would be needed for the program.

FMCSA officials stated that termination of the previous demonstration project, the temporary status of the pilot program, and increased interest in the Agency's enterprise operating authority resulted in lower levels of interest in the pilot program. FMCSA officials also pointed out that Mexican long-haul authority only

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<sup>20</sup> Section 6901 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act requires FMCSA to conduct the pilot program in compliance with Title 49 United States Code Section 31315(e). Under this statute, pilot program plans must include certain elements, including a reasonable number of participants to yield statistically valid findings. In addition, Title 49 Code of Federal Regulations Section 381.400(d) states that the number of participants in a pilot program must be large enough to ensure statistically valid findings.

allows transportation of international cargo, and Mexican motor carriers generally do not have established business relationships in the United States to transport freight back to Mexico that would make long-haul operations profitable.

While the 15 pilot program participants did not raise concerns regarding safety, the sample was too small for us to produce statistically reliable estimates. Because FMCSA lacked an adequate number of participants, we could not determine with confidence whether the 15 carriers are representative.<sup>21</sup> Without an adequate and representative sample, one cannot project the safety performance for an unknown population of Mexico-domiciled carriers that may be granted long-haul operating authority in the future.

During our review, we performed other analyses to determine whether the 15 pilot program participant carriers were a representative sample. For example, we compared the participant carriers' business characteristics (such as form of business, type of registration, and United States operating status) to those of the applicants not chosen for the pilot program—in order to identify any statistically significant differences between the groups. However, to yield reliable results, the statistical test needs to have a minimum expected number of five carriers in each business characteristic group—a condition that was not met for three carrier business characteristics (form of business, type of registration and United States operating status).

#### **Most Pilot Program Activity Was Attributed to Two Carriers and Occurred in the Commercial Zone, Making Any Projection of Safety Unreliable**

During the pilot program, 90 percent (25,630 out of 28,225) of the border crossings and 80 percent (4,473 out of 5,545) of the inspections conducted were attributed to only 2 carriers. This skewed distribution of activity makes a statistical projection about the ability of Mexico-domiciled carriers to operate safely beyond the commercial zones along the United States-Mexico border unreliable.

For example, according to an FMCSA official, the most active carrier in the pilot program primarily made deliveries of Toyota parts to a location in the commercial zone within 2 miles of the border. According to preliminary FMCSA data as of June 15, 2014, Mexico-domiciled motor carrier Servicio de Transporte Internacional y Local (STIL) made 13,598 trips into the United States, but only 99 trips involved operations outside of the commercial zone, and only 18 inspections were conducted during these 99 long-haul trips.

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<sup>21</sup> A sample size of 15 motor carriers would be enough to estimate an unknown prevalence of an attribute with 90-percent confidence and 10-percent precision if the universe size of Mexico-domiciled carriers likely to exist in future long-haul operations were only 18 carriers. This is less than half the size of the applicant pool of 37 carriers who were interested in participating in the pilot program.

FMCSA also tracked mileage accrued by the pilot program carriers using data collected from the electronic monitoring devices installed on each truck. According to FMCSA, pilot program carriers traveled 1.5 million miles during the pilot program. However, only 255,392 of these miles (17 percent) were accrued while traveling outside of the four border States.<sup>22</sup> For the four border States, FMCSA did not differentiate between mileage totals within the commercial zones and those beyond the commercial zones. As a result, we were unable to determine what percentage of the total mileage accrued could be attributed to long-haul operations.

## **CONCLUSION**

FMCSA initiated the pilot program to test and demonstrate the ability of Mexico-domiciled motor carriers to operate safely beyond the commercial zones along the United States-Mexico border. In response to our initial and interim report recommendations, FMCSA improved its monitoring and enforcement activities for the pilot program to ensure compliance with Section 350(a) requirements. FMCSA concluded that pilot program participant carriers, as well as Mexico-domiciled and Mexican-owned carriers with existing authority to operate in the United States, performed no worse than United States and Canadian motor carriers. However, the pilot program lacked an adequate and representative sample of participant carriers to project these results across the universe of Mexico-domiciled carriers likely to engage in cross-border operations. FMCSA indicated that it will decide what actions to take in regards to cross-border trucking long-haul operations once we issue this report.

## **AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE**

We provided a draft of this report to FMCSA on December 5, 2014. FMCSA provided a formal response to our draft report on December 9, 2014, which is included in the appendix to this report. In its response, FMCSA stated that it believes the pilot program provided sufficient and representative information on future participation. According to FMCSA, it analyzed the safety records of not only the 15 pilot program participant carriers but also more than 1,000 Mexico-domiciled certificate carriers and Mexican-owned enterprise carriers. As a result, FMCSA states that it was able to achieve statistically valid findings that support the pilot program analysis and conclusions. While we verified the calculations used by FMCSA to assess the performance data for enterprise and certificate carriers, we did not test the hypothesis that these groups were similar in safety performance, as Section 6901 of the U.S. Troop Readiness, Veterans' Care,

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<sup>22</sup> The four southern border States are Texas, New Mexico, Arizona, and California.

Katrina Recovery, and Iraq Accountability Appropriations Act limited our audit scope to pilot program applicants and participants. Further, FMCSA contends that the pilot program participants are representative of Mexican carriers likely to engage in long-haul trucking in terms of carrier size and safety performance. As support, FMCSA presented a chart that shows the number of trucks for participants and Mexico-wide carriers. However, we maintain that a test for a statistically significant difference between these two groups would be unreliable because of the small number of participants. Finally, FMCSA stated that it will submit its full analysis of the pilot program to Congress in early 2015.

We appreciate the courtesies and cooperation of Department of Transportation and Federal Motor Carrier Safety Administration representatives during this audit. If you have any questions concerning this report, please call me at (202) 366-5630 or Kerry R. Barras, Program Director, at (817) 978-3318.

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cc: DOT Audit Liaison, M-1  
FMCSA Audit Liaison, MCPRS

## **EXHIBIT A. OBJECTIVES, SCOPE, AND METHODOLOGY**

We conducted our work from July 2014 through December 2014 in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our audit objectives were to determine whether (1) Federal and State monitoring and enforcement activities are sufficient to ensure that participants in the pilot program are in compliance with all applicable laws and regulations, (2) the Department has established sufficient mechanisms to determine whether the pilot program is having any adverse effects on motor carrier safety, and (3) the pilot program consists of an adequate and representative sample of Mexico-domiciled carriers likely to engage in cross-border operations beyond the United States municipalities and commercial zones on the United States-Mexico border.

To determine whether monitoring and enforcement activities were sufficient to ensure that pilot program participants complied with applicable laws and regulations, we relied on our prior work and followed up on our prior audit recommendations. For each recommendation, we evaluated FMCSA's progress in implementing its planned actions. We observed FMCSA inspections of motor carriers operating at the border in Otay Mesa, CA, and, El Paso, TX, the two most active ports in the pilot program. We interviewed FMCSA personnel to gauge their understanding of vehicle and driver inspection procedures, and to resolve any differences we observed between planned and actual inspection procedures.

To assess whether the Department established sufficient mechanisms to determine whether the pilot program adversely affected motor carrier safety, we conducted an independent analysis of the performance data FMCSA used to evaluate pilot program safety, and identified key business characteristics of the participant and applicant groups (business type, fleet size, etc.). We verified the calculations used by FMCSA to assess the performance data for enterprise and certificate carriers, but we did not assess whether these groups were comparable to other Mexico-domiciled and Mexican-owned carriers. We interviewed FMCSA officials to discuss their plans for future cross-border operations.

To determine whether the pilot program consists of a representative and adequate sample of Mexico-domiciled carriers, we evaluated the participant carriers and potential applicants to determine if the participants provided a representative sample of Mexican carriers that were interested in operating in long-haul operations. Our statistician evaluated the sample for statistical adequacy.

### **Exhibit A. Objectives, Scope, and Methodology**

**EXHIBIT B. REQUIREMENTS OF PUBLIC LAW 107-87, SECTION 350(a)**

No.	Reference	Requirement
	<b>§350(a)</b>	(a) No funds limited or appropriated in this Act may be obligated or expended for the review or processing of an application by a Mexican motor carrier for authority to operate beyond United States municipalities and commercial zones on the United States-Mexico border until the Federal Motor Carrier Safety Administration—
1	§350(a)(1)(A)	requires a safety examination of such motor carrier to be performed before the carrier is granted conditional operating authority to operate beyond United States municipalities and commercial zones on the United States-Mexico border;
	<b>§350(a)(1)(B)</b>	requires the safety examination to include—
2	§350(a)(1)(B)(i)	verification of available performance data and safety management programs;
3	§350(a)(1)(B)(ii)	verification of a drug and alcohol testing program consistent with part 40 of title 49, Code of Federal Regulations;
4	§350(a)(1)(B)(iii)	verification of that motor carrier's system of compliance with hours-of-service rules, including hours-of-service records;
5	§350(a)(1)(B)(iv)	verification of proof of insurance;
6	§350(a)(1)(B)(v)	a review of available data concerning that motor carrier's safety history, and other information necessary to determine the carrier's preparedness to comply with Federal Motor Carrier Safety rules and regulations and Hazardous Materials rules and regulations;
7	§350(a)(1)(B)(vi)	an inspection of that Mexican motor carrier's commercial vehicles to be used under such operating authority, if any such commercial vehicles have not received a decal from the inspection required in subsection (a)(5);
8	§350(a)(1)(B)(vii)	an evaluation of that motor carrier's safety inspection, maintenance, and repair facilities or management systems, including verification of records of periodic vehicle inspections;
9	§350(a)(1)(B)(viii)	verification of drivers' qualifications, including a confirmation of the validity of the Licencia de Federal de Conductor of each driver of that motor carrier who will be operating under such authority; and
10	§350(a)(1)(B)(ix)	an interview with officials of that motor carrier to review safety management controls and evaluate any written safety oversight policies and practices.
	<b>§350(a)(1)(C)</b>	requires that—
11	§350(a)(1)(C)(i)	Mexican motor carriers with three or fewer commercial vehicles need not undergo on-site safety examination; however 50 percent of all safety examinations of all Mexican motor carriers shall be conducted onsite; and
12	§350(a)(1)(C)(ii)	such on-site inspections shall cover at least 50 percent of estimated truck traffic in any year.
13	§350(a)(2)	requires a full safety compliance review of the carrier consistent with the safety fitness evaluation procedures set forth in part 385 of title 49, Code of Federal Regulations, and gives the motor carrier a satisfactory rating, before the carrier is granted permanent operating authority to operate beyond United States municipalities and commercial zones on the United States-Mexico border, and requires that any such safety compliance review take place within 18 months of that motor carrier being granted conditional operating authority, provided that—

Exhibit B. Requirements of Public Law 107-87, Section 350(a)

No.	Reference	Requirement
14	§350(a)(2)(A)	Mexican motor carriers with three or fewer commercial vehicles need not undergo onsite compliance review; however 50 percent of all compliance reviews of all Mexican motor carriers shall be conducted on-site; and
15	§350(a)(2)(B)	any Mexican motor carrier with 4 or more commercial vehicles that did not undergo an on-site safety exam under (a)(1)(C), shall undergo an on-site safety compliance review under this section.
16	§350(a)(3)	requires Federal and State inspectors to verify electronically the status and validity of the license of each driver of a Mexican motor carrier commercial vehicle crossing the border;
17	§350(a)(3)(A)	for every such vehicle carrying a placardable quantity of hazardous materials;
18	§350(a)(3)(B)	whenever the inspection required in subsection (a)(5) is performed; and
19	§350(a)(3)(C)	randomly for other Mexican motor carrier commercial vehicles, but in no case less than 50 percent of all other such commercial vehicles.
20	§350(a)(4)	gives a distinctive Department of Transportation number to each Mexican motor carrier operating beyond the commercial zone to assist inspectors in enforcing motor carrier safety regulations including hours-of-service rules under part 395 of title 49, Code of Federal Regulations;
21	§350(a)(5)	requires, with the exception of Mexican motor carriers that have been granted permanent operating authority for three consecutive years—
22	§350(a)(5)(A)	inspections of all commercial vehicles of Mexican motor carriers authorized, or seeking authority to operate beyond United States municipalities and commercial zones on the United States-Mexico border that do not display a valid Commercial Vehicle Safety Alliance inspection decal, by certified inspectors in accordance with the requirements for a Level I Inspection under the criteria of the North American Standard Inspection (as defined in section 350.105 of title 49, Code of Federal Regulations), including examination of the driver, vehicle exterior and vehicle under-carriage;
23	§350(a)(5)(B)	a Commercial Vehicle Safety Alliance decal to be affixed to each such commercial vehicle upon completion of the inspection required by clause (A) or a re-inspection if the vehicle has met the criteria for the Level I inspection; and
24	§350(a)(5)(C)	that any such decal, when affixed, expire at the end of a period of not more than 90 days, but nothing in this paragraph shall be construed to preclude the Administration from requiring reinspection of a vehicle bearing a valid inspection decal or from requiring that such a decal be removed when a certified Federal or State inspector determines that such a vehicle has a safety violation subsequent to the inspection for which the decal was granted.
25	§350(a)(6)	requires State inspectors who detect violations of Federal motor carrier safety laws or regulations to enforce them or notify Federal authorities of such violations;
26	§350(a)(7)(A)	equips all United States-Mexico commercial border crossings with scales suitable for enforcement action; equips 5 of the 10 such crossings that have the highest volume of commercial vehicle traffic with weigh-in-motion (WIM) systems; ensures that the remaining 5 such border crossings are equipped within 12 months; requires inspectors to verify the weight of each Mexican motor carrier commercial vehicle entering the United States at said WIM equipped high volume border crossings; and
27	§350(a)(7)(B)	initiates a study to determine which other crossings should also be equipped with weigh-in-motion systems;

Exhibit B. Requirements of Public Law 107-87, Section 350(a)

No.	Reference	Requirement
28	§350(a)(8)	the Federal Motor Carrier Safety Administration has implemented a policy to ensure that no Mexican motor carrier will be granted authority to operate beyond United States municipalities and commercial zones on the United States-Mexico border unless that carrier provides proof of valid insurance with an insurance company licensed in the United States;
29	§350(a)(9)	requires commercial vehicles operated by a Mexican motor carrier to enter the United States only at commercial border crossings where and when a certified motor carrier safety inspector is on duty and where adequate capacity exists to conduct a sufficient number of meaningful vehicle safety inspections and to accommodate vehicles placed out-of-service as a result of said inspections.
	<b>§350(a)(10)</b>	publishes—
30	§350(a)(10)(A)	interim final regulations under section 210(b) of the Motor Carrier Safety Improvement Act of 1999 (49 U.S.C. 31144 note) that establish minimum requirements for motor carriers, including foreign motor carriers, to ensure they are knowledgeable about Federal safety standards, that may include the administration of a proficiency examination;
31	§350(a)(10)(B)	interim final regulations under section 31148 of title 49, United States Code, that implement measures to improve training and provide for the certification of motor carrier safety auditors;
32	§350(a)(10)(C)	a policy under sections 218(a) and (b) of that Act (49 U.S.C. 31133 note) establishing standards for the determination of the appropriate number of Federal and State motor carrier inspectors for the United States-Mexico border;
33	§350(a)(10)(D)	a policy under section 219(d) of that Act (49 U.S.C. 14901 note) that prohibits foreign motor carriers from leasing vehicles to another carrier to transport products to the United States while the lessor is subject to a suspension, restriction, or limitation on its right to operate in the United States; and
34	§350(a)(10)(E)	a policy under section 219(a) of that Act (49 U.S.C. 14901 note) that prohibits foreign motor carriers from operating in the United States that is found to have operated illegally in the United States.

Exhibit B. Requirements of Public Law 107-87, Section 350(a)

**EXHIBIT C. MAJOR CONTRIBUTORS TO THIS REPORT**

<b>Name</b>	<b>Title</b>
Kerry R. Barras	Program Director
Anette Soto	Project Manager
Pat Conley	Auditor
Kevin Lynch	Analyst
Petra Swartzlander	Senior Statistician
Marvin Tuxhorn	Senior Auditor
Seth Kaufman	Senior Counsel
Christina Lee	Writer-Editor

**Exhibit C. Major Contributors to This Report**

## APPENDIX. AGENCY COMMENTS



U.S. Department of Transportation

1200 New Jersey Ave., S.E.  
Washington, D.C. 20590

Federal Motor Carrier  
Safety Administration

December 9, 2014

**ACTION:** Draft Report: FMCSA Adequately Monitored  
Its NAFTA Cross-Border Trucking Pilot Program but Lacked a  
Representative Sample to Project Overall Safety Performance

**FROM:** T.F. Scott Darling, III   
Acting Administrator

**TO:** Mitchell Behm  
Assistant Inspector General  
for Surface Transportation

The Federal Motor Carrier Safety Administration (FMCSA) appreciates the work of the Office of the Inspector General (OIG) to conduct a final audit of the U.S.-Mexico Cross-Border Long-Haul Trucking Pilot Program. We are pleased that the OIG's report acknowledges that the Agency established monitoring and enforcement activities for its Pilot Program to ensure compliance with all requirements and to address recommendations from your previous audits of the Pilot Program. The OIG's audit additionally recognizes that FMCSA established sufficient mechanisms and analysis of carrier safety data to determine whether the Pilot Program had adverse effects on motor carrier safety. Furthermore, it is noted that the OIG's review confirms FMCSA's conclusion that Pilot Program participants demonstrated better safety performance than U.S. and Canadian motor carriers.

FMCSA recognizes that Section 6901 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act limited the OIG's analysis to data compiled on the Pilot Program carriers. The OIG's report concludes that FMCSA's Pilot Program lacked an adequate number of Mexico-domiciled participant carriers because the OIG could not determine with confidence whether the 15 Pilot Program carriers are representative of the population of Mexican domiciled motor carriers that may be granted long-haul authority. However, FMCSA believes that the Pilot Program data is, as the chart below indicates, representative of the Mexican motor carriers likely to engage in long-haul trucking in terms of both carrier size and safety performance. The chart below compares the distribution of Pilot Program carriers by size to that of distribution of companies in Mexico.

### Appendix. Agency Comments

Number of Trucks	Mexico-wide	Pilot Program Participants*
1-5	82.7%	80.0% (12 out of 15)
6-30	15.1%	6.7% (1 out of 15)
31-100	1.7%	0.0% (0 out of 15)
100+	0.5%	13.3% (2 out of 15)

With respect to the representativeness of the pilot carrier safety performance data, there are a limited number of companies that would profit from transporting goods beyond the commercial zones, and fewer that would have established business relationships that would support transportation beyond the border States. As these motor carriers may not transport domestic freight from point to point in the United States, they must have a product to haul back to Mexico or travel beyond the commercial zones is not profitable. As a result, we believe that the pilot program did, in fact, provide sufficient and representative information on future participation, especially in the short-term.

As noted in the Agency's April and July 2011 Federal Register notices, FMCSA included a review of the safety records of other types of Mexican-controlled operations (Enterprise and Certificate carriers') safety records for this same 3-year period. These operations allow for Mexican-controlled vehicles to operate long-haul into the U.S. As a result, FMCSA examined safety data from a population of more than 1,000 Mexico-domiciled (Certificate) or Mexican-owned (Enterprise) motor carriers that conducted long-haul transportation beyond the commercial zones during the Pilot Program period. This included 351 Enterprise carriers that received authority during this same 3-year period.

FMCSA believes this robust set of data to be representative of carriers likely to operate in long-haul operations, FMCSA was able to achieve statistically valid findings regarding the performance of Mexico-domiciled and Mexican-owned long-haul motor carriers, which support the Pilot Program analysis and conclusions. Based on this data, FMCSA finds that the records of these carriers indicate that they are as safe, and, in most metrics safer, than U.S. and Canadian motor carriers. This full analysis will be conveyed in FMCSA's Report to Congress which will be submitted in early 2015.

Again, we thank the OIG for its timely report and its advice throughout the Pilot Program. Should you have any questions, or need additional information regarding our response, please contact William A. Quade, Associate Administrator for Enforcement, at (202) 366-8163.

#### **Appendix. Agency Comments**

**APPENDIX K – APPEALS COURT DECISION**

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, ET AL., PETITIONERS v. UNITED STATES DEPARTMENT OF TRANSPORTATION, ET AL., RESPONDENTS; OWNER-OPERATOR INDEPENDENT DRIVERS ASSN., INC., PETITIONER v. FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, ET AL., RESPONDENTS

No. 11-1444, No. 11-1251

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

724 F.3d 206; 2013 U.S. App. LEXIS 17990

December 6, 2012, Argued

April 19, 2013, Decided

July 26, 2013, Reissued

PRIOR HISTORY: [\*\*1]

On Petitions for Review of an Order of the Federal Motor Carrier Safety Administration.

Int'l Bhd. of Teamsters v. United States DOT, 714 F.3d 580, 2013 U.S. App. LEXIS 7836 (D.C. Cir., 2013)

COUNSEL: Barbara J. Chisholm argued the cause for petitioners International Brotherhood of Teamsters, et al. With her on the briefs were Stephen P. Berzon, Jonathan Weissglass, Diana S. Reddy, and Scott L. Nelson.

Paul D. Cullen, Sr. argued the cause for petitioner Owner-Operator Independent Drivers Assn., Inc. With him on the briefs were Joyce E. Mayers and Paul D. Cullen, Jr.

Michael P. Abate, Attorney, U.S. Department of Justice, argued the cause for respondents. With him on the brief were Tony West, Assistant Attorney General at the time the brief was filed, Ronald C. Machen, Jr., U.S. Attorney, David C. Shilton, John L. Smeltzer, and Michael S. Raab, Attorneys, Paul M. Geier, Assistant General Counsel, Federal Motor Carrier Safety Administration, and Peter J. Plocki, Deputy Assistant General Counsel.

Randolph D. Moss and Brian M. Boynton were on the brief for amicus curiae California Agricultural Issues Forum in support of respondents. Seth T. Waxman entered an appearance.

Stephan E. Becker and Daron T. Carreiro were on the brief for amicus curiae The United Mexican States in support of respondents.

JUDGES: Before: [\*\*2] HENDERSON, ROGERS, and KAVANAUGH, Circuit Judges.  
Opinion for the Court filed by Circuit Judge KAVANAUGH.

OPINION BY: KAVANAUGH

OPINION

[\*210] KAVANAUGH, Circuit Judge: Pursuant to statute, the Federal Motor Carrier Safety Administration recently authorized a pilot program that allows Mexico-domiciled trucking companies to operate trucks throughout the United States, so long as the trucking companies comply with certain federal safety standards. Two groups representing American truck drivers, the Owner-Operator Independent Drivers Association and the International Brotherhood of Teamsters, contend that the pilot program is unlawful. We disagree and deny their petitions for review.

## I

Before 1982, trucking companies from Canada and Mexico could apply for a permit to operate in the United States. In 1982, concerned that Canada and Mexico were not granting reciprocal access to American trucking companies, Congress passed and President Reagan signed a law [\*211] that prohibited the U.S. Government from processing permits for companies domiciled in those two countries. The trucking dispute between the United States and Mexico has lingered since then.

The United States and Mexico attempted to resolve the impasse when negotiating [\*\*3] the North American Free Trade Agreement. After NAFTA took effect in 1994, the U.S. Government announced a program that would gradually allow Mexico-domiciled trucking companies to operate throughout the United States. Soon thereafter, however, the U.S. Government announced that Mexico-domiciled trucking companies would be limited to specified commercial zones in southern border states.

Mexico then complained to a NAFTA arbitration panel about that limited access. The panel ruled that the United States had to allow Mexico-domiciled trucking companies to operate throughout the United States. But the panel also explained that the United States could require those companies to comply with the same regulations that apply to American trucking companies. The panel also ruled that if the United States failed to allow Mexico-domiciled trucks to operate throughout the United States, Mexico would be permitted to impose retaliatory tariffs.

In response, Congress passed and President George W. Bush signed a law that authorized the Federal Motor Carrier Safety Administration, part of the Department of Transportation, to grant permits to Mexico-domiciled trucking companies so long as the trucking companies [\*\*4] complied with U.S. safety requirements. See Pub. L. No. 107-87, § 350, 115 Stat. 833, 864 (2001). As the U.S. Government worked to establish a permitting regime, Congress passed and President Bush signed another law requiring the Department of Transportation to implement a pilot program to ensure that Mexico-domiciled trucks would not make the roads more dangerous. See U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, Pub. L. No. 110-28, § 6901, 121 Stat. 112, 183 (2007).

In 2007, FMCSA instituted a pilot program, but Congress passed and President Obama signed a law that expressly defunded the program before it was completed. See Omnibus Appropriations Act of 2009, Pub. L. No. 111-8, § 136, 123 Stat. 524, 932 (2009). After Mexico imposed \$2.4 billion in retaliatory tariffs in response, Congress passed and President Obama signed a law reinstating funds for the program. See generally Consolidated Appropriations Act of 2010, Pub.

L. No. 111-117, 123 Stat. 3034 (2009). In 2011, the agency again instituted a pilot program, see 76 Fed. Reg. 40,420 (July 8, 2011), which the Drivers Association and the Teamsters now challenge on [\*\*5] multiple legal grounds.

## II

The initial question is whether the Drivers Association and the Teamsters have standing to challenge the pilot program. The Government argues that the groups lack Article III standing, prudential standing, and organizational standing. We disagree.

To establish Article III standing, a plaintiff or petitioner must demonstrate that it has suffered injury in fact; that its injuries are fairly traceable to the allegedly unlawful conduct; and that a favorable ruling would redress its injuries. See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). Here, both the Drivers Association and the Teamsters have suffered an injury in fact under the doctrine of competitor standing. The competitor standing doctrine recognizes that "economic actors suffer an injury in fact when agencies lift [\*212] regulatory restrictions on their competitors or otherwise allow increased competition against them." *Sherley v. Sebelius*, 610 F.3d 69, 72, 391 U.S. App. D.C. 258 (D.C. Cir. 2010) (quotation marks and alteration omitted). Because the pilot program allows Mexico-domiciled trucks to compete with members of both these groups, the Drivers Association and the Teamsters have suffered an injury in fact. The causation [\*\*6] and redressability requirements of Article III standing are easily satisfied because, absent the pilot program, members of these groups would not be subject to increased competition from Mexico-domiciled trucks operating throughout the United States.

The Drivers Association and the Teamsters also meet the prudential standing "zone of interests" test. To establish prudential standing under the zone of interests test, the groups' asserted injuries "must be arguably within the zone of interests to be protected or regulated by the statute[s]" that they allege were violated. *Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians v. Patchak*, 132 S. Ct. 2199, 2210, 183 L. Ed. 2d 211 (2012) (quotation marks omitted). As the Supreme Court recently emphasized, the prudential standing test "is not meant to be especially demanding." *Id.* (quotation marks omitted). It "forecloses suit only when a plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit." *Id.* (quotation marks omitted).

In authorizing the pilot program, Congress balanced a variety of interests, including safety, American truckers' [\*\*7] economic well-being, foreign trade, and foreign relations. These trucking groups are plainly within the zone of interests of the statutes governing the pilot program.

Finally, the Drivers Association and the Teamsters both have organizational standing. An organization has standing to seek injunctive relief if at least one of its members would have

standing and if the issue is germane to the organization's purpose. See *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 342-43, 97 S. Ct. 2434, 53 L. Ed. 2d 383 (1977). Both groups satisfy these requirements: Their members are hurt by increased competition, and the groups exist to protect the economic interests of their members.

We therefore conclude that both groups have standing to challenge the pilot program.

### III

On the merits, we first consider the Drivers Association's arguments.

The Drivers Association advances seven distinct arguments that the pilot program violates various statutes and regulations. We find none to be persuasive.

First, the Drivers Association contends that the pilot program unlawfully allows Mexico-domiciled truckers to use their Mexican commercial drivers' licenses. The Drivers Association says that the pilot program thus violates [\*\*8] a federal statute that provides: "No individual shall operate a commercial motor vehicle without a valid commercial driver's license issued in accordance with section 31308." 49 U.S.C. § 31302. Section 31308, in turn, requires the Secretary of Transportation to set "minimum uniform standards for the issuance of commercial drivers' licenses . . . by the States." *Id.* § 31308 (emphasis added). The Drivers Association contends that, working together, Sections 31302 and 31308 require all truck drivers operating in the United States to have commercial drivers' [\*213] licenses issued by a State, and Mexico obviously is not a state.

The relevant portions of Sections 31302 and 31308 were initially enacted in the 1990s. See Transportation Equity Act for the 21st Century, Pub. L. No. 105-178, § 4011, 112 Stat. 107, 407 (1998); Pub. L. No. 103-272, § 1(d), 108 Stat. 745, 1020 (1994). Even if Sections 31302 and 31308 alone might prohibit Mexican truckers from using their Mexican commercial drivers' licenses, two subsequent statutes made clear that Mexican commercial drivers' licenses are permissible. A statute enacted in 2001 requires the Federal Motor Carrier Safety Administration to verify that each [\*\*9] Mexican truck driver has the proper qualifications, "including a confirmation of the validity of the Licencia de Federal de Conductor [the Mexican-issued commercial driver's license] of each driver." Pub. L. No. 107-87, § 350(1)(B)(viii), 115 Stat. 833, 864 (2001). A second statute enacted in 2007 requires the Secretary of Transportation to publish "a list of Federal motor carrier safety laws and regulations, including the commercial drivers['] 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." U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, Pub. L. No. 110-28, § 6901(b)(2)(B)(v), 121 Stat. 112, 184 (2007) (emphasis added). Those two statutes -- enacted in two separate public laws directly addressing the issue of Mexican trucks -- reflect Congress's decision to allow Mexican truckers with Mexican commercial drivers' licenses to drive on U.S. roads.

The Drivers Association would have us find that those two laws are worthless surplusage. Reading all of the relevant statutes [\*\*10] together, as we must, we think the more sensible conclusion is that Congress decided that Mexico-domiciled truckers with Mexican commercial drivers' licenses could drive on U.S. roads and that a Mexican commercial driver's license would be considered the essential equivalent of a state commercial driver's license for purposes of this statutory scheme. We therefore conclude that the pilot program allows Mexican truck drivers to use their Mexican-issued commercial drivers' licenses.

Second, the Drivers Association argues that the pilot program violates a statute governing medical certificates for truckers. Under that statute, the Secretary of Transportation must ensure that "the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely" and that the physical exams required of truckers are performed by examiners who have received adequate training and are listed on a national registry. See 49 U.S.C. §§ 31149(c)(1)(A)(i), (d). The Secretary has fulfilled that requirement by finding that issuance of a Mexican commercial driver's license, which requires a physical examination every two years, provides "proof of medical fitness to [\*\*11] drive." 49 C.F.R. § 391.41(a)(1)(i). Moreover, the requirement that the examiner be listed on a national registry has not yet taken effect. See 77 Fed. Reg. 24,104, 24,105 (April 20, 2012).

Third, the Drivers Association contends that the pilot program violates federal regulations establishing procedures for drug testing. By regulation, all drug tests must be processed at certified laboratories. See 49 C.F.R. § 40.81. The Drivers Association contends that the pilot program violates this regulation because the program allows for specimens to be collected in Mexico. But nothing in the regulation prohibits collection of the specimens in foreign countries so long as they are [\*214] processed at a certified lab. Because the specimens collected under the pilot program must be sent to certified labs for processing, the pilot program complies with the cited drug testing regulations.

Fourth, the Drivers Association claims that the three previously discussed parts of the pilot program allow Mexico-domiciled trucks to comply with Mexican law instead of U.S. law. And because trucking companies may receive a permit to operate in the United States only if they comply with applicable U.S. law, see 49 U.S.C. § 13902(a)(1), [\*\*12] the Drivers Association argues that the Secretary may not grant a permit to any company participating in the pilot program. However, as we have already explained, U.S. law permits Mexican truckers to use their Mexican commercial drivers' licenses and to rely on those licenses as proof of medical fitness to drive. And the pilot program's drug-testing rules are valid under U.S. law. The pilot program therefore does not substitute compliance with Mexican law for compliance with U.S. law; as a result, this catchall argument by the Drivers Association is unavailing.

Fifth, the Drivers Association asserts that the agency granted "exemptions" to Mexico-domiciled trucking companies without following the proper statutory procedures. The statutory procedures cited by the Drivers Association for granting exemptions from safety regulations are contained in subsection (b) of 49 U.S.C. § 31315. But the statute makes clear that pilot programs such as this

one need not go through the separately listed procedures for exemptions. See 49 U.S.C. § 31315(c). Therefore, this argument fails.

Sixth, the Drivers Association argues that the agency failed to meet its obligation to publish a list of safety laws [\*\*13] and regulations for which it "will accept compliance with a corresponding Mexican law or regulation as the equivalent to compliance with the United States law or regulation" and that the agency failed to explain "how the corresponding United States and Mexican laws and regulations differ." U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, § 6901(b)(2)(B)(v). But the agency in fact published such an analysis in the Federal Register. See 76 Fed. Reg. 20,807, 20,814 (April 13, 2011). The agency therefore satisfied that requirement.

Seventh, the Drivers Association contends that the pilot program is not "designed to achieve a level of safety that is equivalent to, or greater than, the level of safety that would otherwise be achieved through compliance with" applicable safety laws and regulations. 49 U.S.C. § 31315(c)(2). The Drivers Association claims that the pilot program fails that requirement because it allows Mexico-domiciled truckers to rely on their commercial drivers' licenses, accepts those licenses as proof that a driver is medically fit to drive, and includes less stringent drug-testing procedures. However, as previously [\*\*14] explained, federal statutes, not the pilot program, enable Mexico-domiciled truckers to use their commercial drivers' licenses, and the pilot program complies with applicable U.S. drug-testing regulations. And the agency reasonably concluded that those requirements are designed to achieve an equivalent level of safety. Hence, the Drivers Association's arguments fail.

#### IV

Having concluded that the pilot program withstands all of the Drivers Association's challenges, we now turn to the six additional arguments advanced by the Teamsters.

[\*215] First, the Teamsters argue that the pilot program is unlawful because not all Mexico-domiciled trucks are required to display a decal certifying that the truck complies with American safety standards. See 49 U.S.C. §§ 30112, 30115. But that decal requirement applies only if the trucks are "import[ed] into the United States" or are "introduce[d] . . . in interstate commerce" within the meaning of the Motor Vehicle Safety Act. 49 U.S.C. § 30112(a)(1). The agency concluded that the requirement does not apply to this class of Mexican trucks because the trucks are regularly driven into and out of the United States; they are not, in the agency's view, either imported [\*\*15] or introduced in interstate commerce. We must uphold the agency's interpretation of "import" and "introduce . . . in interstate commerce" unless Congress has unambiguously spoken to the contrary or unless the agency's interpretation is an unreasonable interpretation of an ambiguous statutory provision. See *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984).

In our view, the agency reasonably concluded that the ordinary meaning of "import" is "to bring (wares or merchandise) into a place or country from a foreign country in the transactions of commerce." WEBSTER'S NEW INTERNATIONAL DICTIONARY SECOND EDITION 1250 (1945). That definition would apply to Mexico-domiciled trucks only if the trucks -- not the items they carry -- were brought into the country as commercial goods. That interpretation conforms to the longstanding rule that "vessels have been treated as sui generis, and subject to an entirely different set of laws and regulations from those applied to imported articles." *The Conqueror*, 166 U.S. 110, 118, 17 S. Ct. 510, 41 L. Ed. 937 (1897). Because the trucks themselves are the instrumentalities of commerce and not wares or merchandise, it was reasonable for the agency [\*\*16] to conclude that the trucks are not imported within the meaning of this statute.

The agency also reasonably concluded that the trucks are not introduced in interstate commerce within the meaning of the Act. The Act defines "interstate commerce" as "commerce between a place in a State and a place in another State or between places in the same State through another State." 49 U.S.C. § 30102(a)(4). That definition does not include cross-border traffic between Mexico and the United States. Congress could have included foreign commerce in this definition, but it did not.

The Teamsters cite *National Association of Motor Bus Owners v. Brinegar*, where this Court interpreted a definition of interstate commerce in a different statute to include all vehicles "on a public highway upon which interstate traffic is moving." 483 F.2d 1294, 1311, 157 U.S. App. D.C. 291 (D.C. Cir. 1973) (Robinson, J., controlling opinion). But *Brinegar* did not interpret the statute at issue in this case and did not involve foreign commerce and thus that case did not reach the question presented here. See *id.* at 1305. As a result, *Brinegar* does not foreclose the agency's interpretation of interstate commerce. In any event, even if Mexico-domiciled [\*\*17] trucks transporting goods between the United States and Mexico are "introduce[d] . . . in interstate commerce," the safety decal requirement still does not apply to those trucks because the safety decal requirement does not apply to the "introduction or delivery for introduction in interstate commerce of a motor vehicle or motor vehicle equipment after the first purchase of the vehicle or equipment in good faith other than for resale." 49 U.S.C. § 30112(b)(1). The Mexico-domiciled trucks at issue in this case are driven into the United States to transport goods. The trucks themselves [\*216] are not being resold. For that reason as well, the safety decal requirement simply does not apply to these trucks.

Second, the Teamsters contend that the vision tests given to Mexican truck drivers require them to recognize only the color red while American truck drivers are required to recognize red, yellow, and green. However, the Teamsters' argument is foreclosed by *International Brotherhood of Teamsters v. Peña*, where this Court upheld the determination that Mexican medical standards need not be identical to American standards. See 17 F.3d 1478, 1484-86, 305 U.S. App. D.C. 125 (D.C. Cir. 1994). Here, the agency adequately [\*\*18] explained its determination that the

Mexican medical standards, some of which are more stringent than the American standards, would provide a level of safety at least equivalent to the American standards taken as a whole.

Third, the Teamsters assert that the pilot program is unlawful because Mexico has not granted U.S.-domiciled trucks "simultaneous and comparable authority" to operate in Mexico. See U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, § 6901(a)(3). The Teamsters acknowledge that Mexico has granted U.S.-domiciled trucks legal authority to operate in Mexico, but complain that, as a practical matter, it is very difficult for American trucks to operate in Mexico. Because the statute requires Mexico to grant only legal authority to American trucks, the Teamsters' argument fails.

Fourth, the Teamsters argue that the pilot program impermissibly grants credit to trucking companies that participated in the 2007 pilot program. Under the relevant regulation, the agency may "grant permanent operating authority to a Mexico-domiciled carrier no earlier than 18 months after the date that provisional operating authority is granted." [\*\*19] 49 C.F.R. § 365.507(f). The agency credits any time spent in the previous pilot program toward the 18 months required under this pilot program. The Teamsters argue that interpretation is impermissible. But the text of the regulation does not prohibit the agency from crediting a company for time that it participated in the 2007 program. We therefore cannot say that the agency's interpretation is incorrect, much less unreasonably so.

Fifth, the Teamsters contend that the pilot program does not include a "reasonable number of participants necessary to yield statistically valid findings." 49 U.S.C. § 31315(c)(2)(C). But this argument fails because an unlimited number of trucking companies may participate in the program. Whether Mexico-domiciled trucking companies ultimately avail themselves of the opportunity is outside the agency's control. The agency has therefore met its obligation to include a sufficient number of participants so as to yield valid results. The Teamsters also argue that the program cannot yield statistically valid findings because it focuses on the number of inspections rather than the number of participants, and because it presumes that Mexico-domiciled trucking companies [\*\*20] are as safe as their American counterparts. However, the Teamsters do not explain why the agency's approach is flawed, and in light of the degree of deference we give to the agency's statistical methodology, we cannot conclude that the program will yield invalid findings. See *Alaska Airlines, Inc. v. Transportation Security Administration*, 588 F.3d 1116, 1120, 388 U.S. App. D.C. 442 (D.C. Cir. 2009).

Sixth, the Teamsters contend that the agency violated the National Environmental Policy Act, which requires agencies to analyze the environmental impact of "major Federal actions significantly affecting the quality of the human environment." [\*217] 42 U.S.C. § 4332(C). In this case, the Act required the agency to prepare a document called an Environmental Assessment. See 40 C.F.R. § 1501.4(b). The agency did so.

In *Department of Transportation v. Public Citizen*, the Supreme Court held that the agency was not responsible under NEPA for evaluating the environmental effects of the President's decision

to allow Mexican trucks on U.S. roads. See 541 U.S. 752, 765-70, 124 S. Ct. 2204, 159 L. Ed. 2d 60 (2004). The Teamsters accept that holding. But they try to argue that the agency still had discretion to restrict the pilot program so as to mitigate the environmental [\*\*21] impacts. The Teamsters identified several alternatives the agency should have pursued. But, as the agency has explained, the short and dispositive answer to the Teamsters' argument is that the agency lacks authority to impose the alternatives proposed by the Teamsters and those alternatives would go beyond the scope of the pilot program. See Final Environmental Assessment of the Pilot Program on NAFTA Long-Haul Trucking Provisions, Docket No. FMCSA-2011-0097, at 6, 7-10 (Sept. 2011) (describing agency's discretion and rejecting alternatives the agency lacks discretion to implement).

In addition, the Teamsters contend that the agency released its environmental analysis too late. An agency's analysis must be released "before decisions are made and before actions are taken." 40 C.F.R. § 1500.1(b). The Teamsters argue that the agency violated this requirement because it published its Environmental Assessment after it had already issued a final notice of intent to proceed with the pilot program. However, the Teamsters have not identified any aspect of the pilot program that the agency could have designed differently to reduce the environmental impacts, and the agency completed its Environmental [\*\*22] Assessment before authorizing any Mexico-domiciled trucking companies to operate under the program. Any technical error was therefore harmless and not grounds for vacating or remanding. See *Nevada v. Department of Energy*, 457 F.3d 78, 90, 372 U.S. App. D.C. 432 (D.C. Cir. 2006).

\* \* \*

We deny the petitions for review.

So ordered.