

the I-94/I-69 improvements will be a part of the Environmental Impact Statement.

Four plaza and transportation improvement alternatives have been identified within the recommended study area. Alternatives will include: (1) No-Build Alternative, (2) Township alternative with a secured I-94 corridor, (3) City alternative with Pine Grove Avenue relocated to the east and an unsecured I-94 corridor.

Agency and citizen involvement will continue to be solicited throughout this process. A public hearing will be held on the Draft Environmental Impact Statement (DEIS). Public notice will be given of the time and place of the hearing. The DEIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: April 20, 2007.

**James J. Steele,**

*Division Administrator, Lansing, Michigan.*

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**BILLING CODE 4910-22-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2007-28055]

#### Demonstration Project on NAFTA Trucking Provisions

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

**ACTION:** Notice; request for public comment.

**SUMMARY:** FMCSA announces the initiation of a project to demonstrate the ability of Mexico-based motor carriers to operate safely in the United States beyond the commercial zones along the U.S.-Mexico border. The project is part of FMCSA's implementation of the North American Free Trade Agreement (NAFTA) cross-border trucking provisions. The demonstration project will allow up to 100 Mexico-domiciled motor carriers to operate throughout the United States for one year. Up to 100 U.S.-domiciled motor carriers will be granted reciprocal rights to operate in Mexico for the same period. Participating Mexican carriers and

drivers will 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 will be tracked closely by FMCSA and its State partners, a joint U.S.-Mexico monitoring group, and an evaluation panel independent of the Department of Transportation (DOT). The resulting data will be considered carefully before further decisions are made concerning the implementation of the NAFTA trucking provisions.

**DATES:** Comments must be received on or before May 31, 2007.

**ADDRESSES:** You may submit comments identified by DOT DMS Docket Number FMCSA-2007-28055 by any of the following methods:

- Web Site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1-202-493-2251.

- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

- Federal eRulemaking Portal: Go to [www.regulations.gov](http://www.regulations.gov). Follow the online instructions for submitting comments.

**Instructions:** All submissions must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information, see the Public Participation heading below. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided. Please see the Privacy Act heading below.

**Docket:** For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., e.t., 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 complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://dms.dot.gov>.

**Public Participation:** The DMS is 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 DMS 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:** Mr. Milt Schmidt, Division Chief, North American Borders Division, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Telephone (202) 366-4049; e-mail [milt.schmidt@dot.gov](mailto:milt.schmidt@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### 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 grants of operating authority to motor carriers domiciled, or owned or controlled by someone, 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 approximately 25 miles into the United States. Every year Mexico-domiciled commercial motor vehicles (CMVs) cross into the U.S. about 4.5 million times. U.S.-domiciled motor carriers are not authorized to operate in Mexico at all.

Trucking issues at the U.S./Mexico border were not fully addressed until NAFTA in the early 1990s, when both nations agreed to change their policies. NAFTA required the United States incrementally to lift the moratorium on licensing Mexico-domiciled motor carriers to operate beyond the border 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. In December 1995, the ICC published a rule and a revised application form for the processing of Mexico-domiciled

property carrier applications (Form OP-1(MX)). These rules anticipated the implementation of the second phase of NAFTA, providing Mexican property carriers 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.

After the Administration announced its intent to resume the process for opening the border in 2001, Congress enacted section 350 of the DOT and Related Agencies Appropriations Act for Fiscal Year 2002 (Pub. L. 107-87, 115 Stat. 833, at 864). Section 350 prohibited FMCSA from using Federal funds 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 requirements of section 350 have been reenacted in each subsequent DOT Appropriations Act. The rulemaking requirements of the Act were met by a series of rules published on March 19, 2002 (67 FR 12653, 67 FR 12702, 67 FR 12758, 67 FR 12776) and a further rule published on May 13, 2002 (67 FR 31978).

In November 2002, Secretary of Transportation Norman Mineta certified, as required by section 350(c)(2), that authorizing Mexican 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. The Secretary's certification was made in response to the June 25, 2002, report of DOT's Office of Inspector General (OIG) on the implementation of safety requirements at the U.S.-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 the OIG was required to review.

On February 23, 2007, United States Secretary of Transportation Mary E. Peters and Mexico Secretary of Communications and Transportation Luis Téllez Kuenzler announced a demonstration project to implement the trucking provisions of NAFTA. The purpose of the project is to demonstrate the effectiveness of the safety programs adopted by Mexico-domiciled motor carriers and the monitoring and enforcement systems developed by

DOT, which together ensure that Mexican motor carriers operating in the United States can maintain the same level of highway safety as U.S.-based motor carriers.

#### **Demonstration Project Description**

The demonstration project has a one-year limit. It will allow up to 100 Mexico-domiciled motor carriers to operate beyond the border commercial zones and transport international cargo throughout the United States. For purposes of the demonstration project, "international cargo" means cargo transported by Mexico-domiciled motor carriers in CMVs from Mexico to the United States, with no loading in the United States, or from the United States to Mexico, with no unloading in the United States [49 CFR 365.501(b)]. Drivers for participating motor carriers must comply with the entry requirements of the Department of Homeland Security (DHS). Under DHS regulations, "[p]urely domestic [U.S.] service or solicitation [by non-U.S. drivers], in competition with the United States operators [i.e., drivers], is not permitted" [8 CFR 214.2(b)(4)(i)(E)(1)]. Participating motor carriers will be required to comply with all State and Federal environmental and emission regulations. Carriers must certify that their vehicles have been manufactured in accordance with the National Highway Traffic Safety Administration's (NHTSA) Federal Motor Vehicle Safety Standards (FMVSS).

All Mexico-domiciled participants operating in the United States under the demonstration project will be required to comply with all United States safety standards including hours of service, driver medical standards, financial responsibility, drug and alcohol testing, size and weight limits, and the ability to communicate in English. Every Mexico-domiciled CMV scheduled to be used beyond the border commercial zones will undergo an in-depth safety inspection before being allowed to operate in the U.S. and must display a valid Commercial Vehicle Safety Alliance (CVSA) inspection decal indicating it has passed a thorough vehicle inspection. CVSA decals are valid for up to 3 consecutive months, so follow-up inspections on Mexico-domiciled CMVs will be required at least every 3 months. Each vehicle will be checked for a valid CVSA decal every time it enters the U.S., and the validity of each operator's driver's license will also be checked. The display of a valid CVSA decal will not necessarily exempt a vehicle from safety inspections.

Participating motor carriers must file proof of insurance underwritten by a

U.S. insurance company and pay State registration fees and State and Federal fuel taxes.

The demonstration project gives participants no exemptions from U.S. safety requirements. In fact, it requires compliance with additional safety requirements not applicable to other motor carriers operating in this country, such as having a current CVSA decal on the vehicle at all times, and passing a safety audit prior to receiving operating authority. Furthermore, under 49 CFR 385.105, FMCSA has developed additional monitoring criteria for Mexico-domiciled motor carriers. Every vehicle operated by these carriers in the U.S. will also be subject to the inspection standards in 49 CFR 365.511.

The demonstration program is reciprocal. Up to 100 U.S.-domiciled motor carriers will be allowed to operate in Mexico on terms similar to those applicable to Mexico-domiciled carriers operating in this country. The Mexican government is finalizing an application form and procedures for use by interested U.S. motor carriers.

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

To participate in the project, a Mexico-domiciled motor carrier must, pursuant to regulations already in place, submit (1) Form OP-1(MX), entitled "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/documents/op-1mx.pdf>. The FMCSA will compare the information and certifications provided in the application with information maintained in databases of the governments of Mexico and the United States.

FMCSA has 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.

### Selection of Carriers To Participate in the Demonstration Program

Several hundred Mexico-domiciled carriers have filed a complete OP-1(MX) application, and more applications are expected. The carriers that were ready for an audit were subjected to an extensive vetting process. Those known to transport hazardous materials or passengers were eliminated. All carriers were also checked against the FMCSA enforcement management information database. Carriers were eliminated if there were any enforcement actions pending, such as unpaid fines, unresolved expedited action letters, or operating authority suspensions/revocations. The remaining carriers were then checked against a U.S. database for involvement in illegal drug activities. Those that passed the vetting process were considered for the demonstration project. Other carriers may be considered for the project as new applications are submitted.

From among the currently-eligible prospective participants, FMCSA is in the process of conducting pre-authorization safety audits on a group of motor carriers diverse both in fleet size and geographical location. Of the carrier applicants selected by the Agency for audit, 18 percent are from non-border states in Mexico, while 82 percent are domiciled in one of Mexico's six border states. About 46 percent of the participants are expected to enter the United States through California, 41 percent through Texas/New Mexico, and 13 percent through Arizona. Some 70 percent of the carrier applicants operate small vehicle fleets, while 25 percent have medium-sized and 5 percent have large fleets. For this demonstration program, a small vehicle fleet is 20 trucks or less, while a medium-sized fleet consists of 21 to 100 trucks. A large fleet is anything in excess of 100 trucks.

### Pre-Authorization Safety Audit (PASA)

A Mexico-domiciled carrier must satisfactorily complete the FMCSA-administered pre-authorization safety audit (PASA) required under FMCSA regulations before it is granted provisional authority to operate in the United States beyond the border commercial zones. This pre-authorization audit is not required for U.S.-based motor carriers. The PASA is a review of the carrier's safety management systems including written procedures and records to validate the accuracy of 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 will not be granted provisional operating authority if FMCSA finds that its safety management controls are inadequate, using the standards in Appendix A to Subpart E of 49 CFR part 365. All PASAs performed under the demonstration project will be conducted at the motor carrier's place of business in Mexico. Vehicles the motor carrier intends to use for operations within the U.S. will be inspected and will be required to have a valid CVSA decal affixed or to pass an in-depth North American Standard Truck Inspection.

As required by FMCSA regulations, the carrier will be denied provisional operating authority if the FMCSA can not:

1. Verify the existence of a controlled substances and alcohol testing program consistent with 49 CFR part 40. The Agency will ensure that the carrier has information on collection sites and laboratories it intends to use.
2. Verify a system of compliance with hours-of-service rules in 49 CFR part 395, including recordkeeping and retention;
3. Verify proof of financial responsibility, as required by 49 CFR part 387;
4. Verify records of periodic vehicle inspections, as required by 49 CFR part 396; and
5. Verify that each driver the carrier intends to assign to operate under the demonstration project meets the requirements of 49 CFR parts 383 and 391. This will include confirmation of the validity of each driver's Licencia Federal de Conductor through the Mexican driver license information system and a check of the Commercial Driver's License Information System (CDLIS) for violations, suspensions, etc.

### Issuance of Operating Authority

If a carrier successfully completes the PASA and the FMCSA approves its application, the Agency will publish a summary of the application as a preliminary grant of authority in the FMCSA Register, which is available at [http://li-public.fmcsa.dot.gov/LIVIEW/pkg\\_html.prc\\_limain](http://li-public.fmcsa.dot.gov/LIVIEW/pkg_html.prc_limain). However, the carrier will not be authorized to operate 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 carrier will be authorized to operate until this notice-and-comment procedure is completed.

Upon granting provisional operating authority, the Agency will assign a unique USDOT Number, including an

"X" suffix, which identifies the motor carrier as authorized to operate beyond the municipalities and commercial zones on the U.S.-Mexico border.

The issuance of OP-1(MX) provisional operating authority will supersede any other operating authority the FMCSA may have issued the carrier, including authority to operate within the border commercial zone. The participating carrier's entire U.S. operations will be subject to the terms and limitations in the OP-1(MX) document, including the prohibition on transporting hazardous materials and passengers.

### Termination of Provisional Operating Authority

The demonstration project will terminate and all provisional operating authority certificates expire one year from the date FMCSA grants the first provisional certificate.

Provisional operating authority may be suspended or revoked at any time during the demonstration project if FMCSA determines that the carrier's safety performance does not meet the standards established in 49 CFR part 385, subpart B. Operating authority may also be suspended or revoked if the motor carrier is found to have transported hazardous materials or passengers in the U.S., or otherwise to be operating beyond the scope of its provisional authority.

If a Mexico-domiciled motor carrier held FMCSA operating authority to operate exclusively within the border commercial zones (OP-2 authority) before being granted provisional OP-1(MX) operating authority, the certificate of registration to operate exclusively within the border commercial zones will be reinstated at no cost to the motor carrier upon expiration of the demonstration project, providing the carrier's safety record during the project has been satisfactory.

### Operating in the U.S. Under OP-1(MX) Provisional Operating Authority

Mexico-domiciled motor carriers are subject to DHS and DOT cabotage requirements and prohibited from providing domestic point-to-point transportation while operating in the U.S. Carriers found to have violated the cabotage requirements will be placed out-of-service under the DOT regulations. DHS could also prohibit the driver from entering the U.S. in the future. FMCSA, in coordination with the International Association of Chiefs of Police (IACP), has developed and provided training to State and local law enforcement agencies on the cabotage requirements.

### Monitoring, Oversight and Enforcement

FMCSA will monitor the operational safety of all Mexico-domiciled motor carriers participating in the demonstration project. To accomplish this, FMCSA will work closely with State commercial vehicle safety agencies, the IACP, CVSA, DHS, and others.

Field monitoring will include inspections of vehicles, verification of compliance with the terms of the provisional operating authority, driver license checks, crash reporting, and initiation of enforcement actions when appropriate. Additionally, a Mexico-domiciled motor carrier committing any violations specified in 49 CFR 385.105(a) and identified through roadside inspections or by other means, may be subject to a compliance review and enforcement action.

Monitoring will also include electronic data collection and analysis. Data collected as a result of field monitoring and other activities will be entered into FMCSA databases. The data will be tracked and analyzed to identify potential safety issues. Appropriate action will be taken to resolve any identified safety issues. This could include suspension or revocation of the provisional operating authority or the initiation of other enforcement action against the carrier or driver.

The DOT and the Mexican Secretaría de Comunicaciones y Transportes (Secretariat of Communication and Transport, or SCT) have established a bi-national monitoring group. The group includes officials from FMCSA, DOT, and the U.S. Trade Representative. Mexican participants include representatives from the Federal Motor Carrier General Directorate, Communications and Transport Secretariat (SCT); the Services Negotiations General Directorate, Economy Secretariat; and the SCT Centers from the Mexican Border States. The monitoring group's objective is to supervise the implementation of the demonstration project and to find solutions to issues affecting the operational performance of the project. The group will generally convene weekly via video conference.

Enforcement is a key component of the monitoring and oversight effort. FMCSA has trained and provided guidance to Federal and State auditors, inspectors and investigators to ensure their knowledge and understanding of the demonstration project and the procedures for taking enforcement actions against carriers or drivers participating in the project.

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

FMCSA is also working with the DHS to develop guidance concerning the enforcement of DHS cabotage regulations. This material will be incorporated into the CVSA North American Standard Inspection Course and provided to roadside enforcement officers.

FMCSA will be issuing policy memoranda and guidance to the Federal field staff, State agencies and others concerning monitoring and enforcement issues, including English language proficiency, inspection of each participating Mexico-domiciled vehicle every time it enters the U.S., enforcement of the Federal Motor Vehicle Safety Standards, and enforcement of the CVSA decal requirement.

To ensure uniformity and effective enforcement, the CVSA has revised the North American Standard Out-of-Service Criteria to include as out-of-service criteria, violations of 49 CFR 391.11(b)(2) relating to the driver's ability to communicate in English while operating in the U.S. and violations of 49 CFR 385.103(c) relating to the display of a valid CVSA decal on vehicles operated by project participants.

### Evaluation and Reporting

The DOT will evaluate the success of the demonstration project by examining the safety performance of Mexico-domiciled motor carriers operating in the U.S. Specifically, FMCSA anticipates examining the crash rate of Mexican carriers, convictions of Mexican drivers for violations of U.S. traffic safety laws, the rate at which Mexican drivers and vehicles are placed out of service when inspected in the U.S., violations discovered during pre-authority safety audits, and compliance of Mexican trucking companies with U.S. drug and alcohol testing regulations. These data will be collected through police reporting of crashes and moving violations, uploads of roadside inspection results performed by FMCSA or our State partners, and uploads of safety audits and compliance reviews of Mexican motor carriers performed by FMCSA staff.

The DOT also intends to provide for an independent evaluation of the

demonstration project. The Secretary has asked former DOT Inspector General Kenneth Mead, former DOT Deputy Secretary Mortimer Downey and former House Appropriations Sub-Committee Chairman Jim Kolbe to serve on an evaluation panel. The panel will be responsible for evaluating the safety impacts of allowing Mexico-domiciled motor carriers to operate on U.S. roads beyond the border commercial zone. They will operate independently from other monitoring efforts and provide their own assessment of the project. Their conclusions will be considered carefully before a decision is made on a permanent full implementation of the NAFTA trucking provisions.

### Request for Comments

The FMCSA has decided to request public comment from all interested persons on the demonstration project outlined above. The FMCSA has fulfilled all of the statutory requirements necessary for the lifting of the moratorium against certain Mexico-domiciled motor carriers. The Agency intends the demonstration project to be the means of validating its safety oversight regime.

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, the 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.

Issued on: April 27, 2007.

**John H. Hill,**  
Administrator.

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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

[Docket No: FTA-2006-23697]

### Public-Private Partnership Pilot Program

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of agency response to comments.