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Brian M. McLaughlin,

Associate Administrator for Policy and Program Development.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 385

[Docket No. FMCSA-98-3299]

RIN 2126-AA35

Safety Monitoring System and Compliance Initiative for Mexican Motor Carriers Operating in the United States

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

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FMCSA proposes to implement a safety monitoring system and compliance initiative to help determine whether Mexican-domiciled carriers conducting operations anywhere in the United States comply with applicable safety regulations and conduct safe operations. This NPRM would revise the safety fitness regulations at 49 CFR part 385 to implement a safety oversight program designed to evaluate the safety fitness of Mexican carriers within 18 months after receiving conditional authority to operate in the United States. This proposal is necessary to implement the entry provisions of the North American Free Trade Agreement (NAFTA).

DATES: We must receive your comments by July 2, 2001.

ADDRESSES: You can mail, fax, hand deliver or electronically submit written comments to the Docket Management Facility, U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001 FAX (202) 493-2251, on-line at <http://dmses.dot.gov/submit>. You must include the docket number that appears in the heading of this document in your comment. You can examine and copy all comments at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. You can also view all comments or download an electronic copy of this document from the DOT Docket Management System (DMS) at <http://dms.dot.gov/search.htm> and typing the last four digits of the docket number

appearing at the heading of this document. 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 web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

FOR FURTHER INFORMATION CONTACT:

Valerie Height, (202) 366-1790, Federal Motor Carrier Safety Administration, 400 7th Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Comments received after the comment closing date will be included in the docket and we will consider late comments to the extent practicable. The FMCSA may, however, issue a final rule at any time after the close of the comment period.

Background

Under the Bus Regulatory Reform Act of 1982 (Public Law No. 97-261, 96 Stat. 1103), Congress imposed a two-year moratorium on the former Interstate Commerce Commission's (ICC) issuance of new grants of U.S. operating authority to motor carriers domiciled in a foreign country, or owned or controlled by persons of a foreign country. The legislation authorized the President to remove or modify the moratorium upon a determination that such action was in the national interest. As a result of legislative and executive extensions, Mexican carriers have been subject to this moratorium since 1982. Since that time, most Mexican motor carriers of property seeking to initiate operations in the United States have been restricted to operating in the municipalities in the United States on the United States-Mexico border or within the commercial zones of such municipalities. Additional information on the implementation of NAFTA is set out in the preamble to the NPRM entitled *Application by Certain Mexican Motor Carriers to Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border*, which addresses revisions to the part 365 application process and the OP-1(MX) application form and is published elsewhere in today's **Federal Register**. As we discussed in the NPRM addressing part 365, commercial motor vehicle safety in the United States is regulated under a comprehensive system of regulations designed to ensure that drivers are medically qualified;

meet applicable licensing standards; can read and speak the English language sufficiently to converse with the general public, understand highway traffic signs and signals in the English language, to respond to official inquiries and to make entries on reports and records; and do not operate vehicles while impaired by drugs or alcohol or excessive fatigue. Our regulations also require carriers to equip every commercial motor vehicle with certain standard safety-related equipment and that vehicles be regularly inspected and maintained to ensure that they remain in safe operating condition. These regulatory requirements are enforced through roadside inspections and on-site compliance reviews. Roadside inspections focus on potentially unsafe vehicle and driver violations that may pose a threat to public safety unless the vehicle or driver is placed out of service. A compliance review comprises an examination of carrier records (including driver logbooks and drug and alcohol testing information), roadside vehicle inspection data, accident records and other safety related information to determine whether a motor carrier meets safety fitness standards as defined in the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations.

The U.S. DOT has consulted extensively with Mexican transportation officials in their efforts to strengthen Mexican vehicle safety regulations, and significant progress has been made in this area. Mexico has agreed to utilize the Commercial Vehicle Safety Alliance (CVSA) out-of-service criteria and has issued final regulations based on these criteria. These standards cannot be fully effective unless complemented by an adequate safety oversight program, including systematic roadside inspections, to ensure compliance with and enforcement of the criteria. U.S. DOT officials have worked extensively with Mexican transportation officials, but Mexico has not yet completed implementation of a comprehensive safety inspection program.

With the exception of the border commercial zone drayage operations, most Mexican carriers have little or no experience operating under regulations comparable to the FMCSRs. Accordingly, the FMCSA must be prepared to evaluate the safety fitness of motor carriers having no experience operating under our comprehensive system of safety regulations.

Proposed Safety Oversight Program

In this NPRM, the FMCSA proposes a safety oversight program to address U.S.

concerns about Mexican motor carrier safety. The initial stage of this program would entail review of safety information submitted by Mexican motor carriers when applying for authority under 49 CFR part 365 or registering under 49 CFR part 368 to operate within the U.S. municipalities and commercial zones along the U.S.-Mexico border. The FMCSA proposes to amend Form OP-2 (Application for Mexican Certificate of Registration for Foreign Motor Carriers and Foreign Private Carriers Under 49 U.S.C. 13902) and Form OP-1(MX) (Application to Register Mexican Carriers for Motor Carrier Authority Under the North American Free Trade Agreement (NAFTA)) to require additional safety related information and certifications of compliance. Mexican carriers would be required to submit, concurrently with the application, completed copies of the Form BOC-3 (Designation of Agents—Motor Carriers, Brokers and Freight Forwarders) and Form MCS-150 (Motor Carrier Identification Report, Application for U.S. DOT Number). These proposals are discussed in two notices published elsewhere in today's **Federal Register**. The requirement to submit a completed Form MCS-150 with the application would ensure that the Mexican carrier obtains a U.S. DOT number and is placed in the FMCSA safety system before it begins operations in the United States.

The FMCSA will conduct workshops and also provide written material, such as handbooks, to help the Mexican applicants understand the various regulatory requirements and the proper way to complete the applications. Once Mexican-domiciled carriers commence operations within the United States, they would be subject to intensified roadside monitoring through the vehicle inspection process. Data generated as a result of these inspections would be evaluated frequently to identify carriers with serious safety problems that warrant immediate attention. We propose to require that, as a condition of registration, all Mexican new entrant carriers undergo at least one satisfactory safety review within 18 months after receiving authority to operate within the United States. The proposed safety review is designed to enable the FMCSA to identify any Mexican carriers that may be conducting unsafe operations or that may lack the basic safety management controls necessary to ensure protection of the public safety.

Registrations issued to Mexican carriers under 49 CFR parts 365 and 368 would be expressly conditioned upon the carrier successfully completing the safety oversight program. The safety

review component of the program would evaluate a Mexican carrier's safety performance and basic safety management controls by reviewing performance-based safety information in the FMCSA's Motor Carrier Management Information System (MCMIS) and documents required to be maintained by motor carriers under the Federal Motor Carrier Safety Regulations, including records related to driver medical qualifications, driver hours of service, drug and alcohol testing and vehicle inspection, maintenance and repair. Specific procedures for the safety review, including the necessary documentation to be made available for review, are still being developed and would be provided to carriers when they get approval to operate. We also contemplate that the safety review process would be further refined as the result of a future rulemaking proceeding implementing a safety review requirement for all new entrant motor carriers under section 210 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106-159, 113 Stat. 1748).

We also propose that the safety reviews be conducted either by reviewing records at the carrier's business premises or by requesting that Mexican carriers bring designated records to alternative locations, such as border inspection facilities. If the safety review determines that the carrier does not satisfactorily exercise basic safety management controls, its registration would be suspended. The carrier would then be required to submit a plan for corrective action within a specified time frame. Upon receipt of the corrective action plan, the FMCSA would promptly conduct a targeted follow-up safety review, if necessary, to determine whether the deficiencies have been corrected. If the carrier satisfactorily corrects the problem(s), the suspension would be lifted and the carrier would be allowed to resume operating within the United States. If the carrier fails to submit a corrective action plan, or if the follow-up safety review determines that the carrier has not satisfactorily corrected the problem, the carrier's registration would be revoked in accordance with the condition of its issuance.

The FMCSA proposes to take expedited action if a Mexican carrier engages in conduct that poses a potentially serious threat to public safety. Such conduct would include:

(1) Using drivers not possessing, or operating without, a valid *Licencia Federal de Conductor* (LFC) or Commercial Driver's License (CDL). A non-valid LFC or CDL would include

one that is falsified, revoked, expired, or without a Hazardous Materials endorsement, when required.

(2) Operating vehicles that have been placed out of service for violations of the Commercial Vehicle Safety Alliance (CVSA) North American Standard Out-of-Service Criteria without making required repairs.

(3) Being involved in, due to carrier act or omission, a hazardous materials incident within the United States involving a highway route controlled quantity of any of the following, as defined in 49 CFR 173.403, 173.50, 173.115, 173.132, and 173.133:

(a) a Class 7 (radioactive) material,
 (b) a Class 1, Division 1.1, 1.2, or 1.3 explosive, or
 (c) a poison inhalation Hazard Zone A or B material.

(4) Being involved in, due to carrier act or omission, two or more hazardous material incidents occurring within the United States and involving any hazardous material not listed above and defined in 49 CFR chapter I.

(5) Using a driver who tests positive for drugs or alcohol or who refuses to submit to required drug or alcohol tests.

(6) Operating within the United States a motor vehicle that is not insured as required by 49 CFR part 387.

(7) Having an aggregate operations out of service rate of 50 percent based upon three inspections occurring within a consecutive 90-day period.

The FMCSA believes that these violations pose the greatest threat to public safety and raise serious questions about a carrier's willingness and ability to conduct safe operations. FMCSA would take expedited action either by issuing a deficiency letter requesting a written response demonstrating that appropriate corrective action has been taken or scheduling an expedited safety review. Failure to respond to the deficiency letter or undergo the expedited safety review would result in the suspension of the carrier's registration. Checking for these activities would require our State partners to expand the scope of the roadside inspection and to collect additional safety data.

The Mexican carrier applicants would remain subject to this oversight program for the entire 18-month initial operations period, even if they demonstrate compliance with our regulations by undergoing a satisfactory safety review before the expiration of the period. If a carrier has not undergone a safety review within 18 months of receiving authority to operate in the United States, it would retain its conditional registration status until a satisfactory safety review is conducted.

The carrier would also remain within the safety oversight program for more than 18 months if it received an unsatisfactory safety review within 18 months but needed additional time beyond the 18-month period to demonstrate that necessary corrective action was taken.

This proposal is consistent with the new motor carrier entrant requirements under section 210(a) of the MCSIA, which, among other things, directs the Secretary of Transportation to require each owner and each operator granted new operating authority to undergo a safety review within the first 18 months after beginning operations under that authority.

Under one of the companion NPRMs appearing in today's **Federal Register**, *Revision of Regulations and Application Form for Mexican-Domiciled Motor Carriers to Operate in U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border*, Mexican carriers currently operating in the U.S. border commercial zones under Certificates of Registration would be required to re-register by submitting revised application forms with expanded carrier safety assessment information, even if not changing the scope of their existing operations. These carriers would also be subject to the safety monitoring system proposed in this NPRM.

Finally, we wish to emphasize that the safety oversight program is intended to supplement, not replace, the regular safety fitness compliance and enforcement procedures applicable to all motor carriers within our jurisdiction.

Section-By-Section Analysis

Proposed § 385.21 describes the safety oversight program for Mexican-domiciled carriers and its components, including the safety review. The proposed safety review could be conducted at a designated location in the United States. Failure to provide the necessary documentation in connection with a safety review may result in the suspension of the carrier's registration until the documents are produced.

Section 385.23 would identify seven categories of serious safety violations which, when identified through roadside inspections or other means, would cause the FMCSA to take expedited action. Expedited action could take the form of a safety review or the issuance of a deficiency letter requesting proof of corrective action for the violations identified in the roadside inspection. Failure to submit an adequate written response to the deficiency letter would result in

suspension of the carrier's authority until the carrier makes the required showing of corrective action.

Section 385.25 would provide for the suspension of a Mexican carrier's registration if the safety review determines that it does not exercise basic safety management controls necessary to ensure safe operations. If the carrier then fails to take necessary corrective action, either by failing to submit a corrective action plan or by submitting an inadequate plan, the carrier's registration could be revoked after notice and an opportunity for a proceeding. This section would clarify that the carrier would also be subject to the suspension and revocation provisions of 49 U.S.C. 13905 for repetitive violations of DOT regulations governing its operations.

Section 385.27 would establish a procedure for administrative review if a Mexican-domiciled carrier believes a suspension under §§ 385.23 and 385.25 is unwarranted. The request for review would be submitted to the Chief Safety Officer, who would be required to complete the review within 10 days after the carrier submits its request.

Section 385.29 would set forth that a Mexican-domiciled carrier would remain in the safety oversight program for 18 months after issuance of its conditional registration or Certificate of Registration. At the end of 18 months, the carrier's authority would become permanent, provided its most recent safety review was satisfactory. If the carrier has not undergone a safety review during the 18-month period, the carrier would remain in the program until a safety review is conducted. If a carrier's registration is under suspension at the end of the 18-month period, it would remain in the safety oversight program until it took the necessary corrective action or its registration was revoked under § 385.25 (b).

Section 385.31 would clarify that Mexican-domiciled carriers are subject to the general safety fitness procedures of subpart A of part 385 during the time they are in the safety oversight program.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and Department of Transportation Regulatory Policies and Procedures

The FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866 and is significant within the meaning of Department of Transportation regulatory policies and procedures (44 FR 11034, February 26,

1979). The Office of Management and Budget has reviewed this document. This proposal is based upon existing statutory authority and serves to a large extent as notice to the affected carriers of procedures that would be used to enforce the Federal Motor Carrier Safety Regulations. The anticipated economic impact of this rulemaking would be minimal for carriers that do not violate applicable safety regulations while operating in the United States. No additional requirements would be imposed on carriers that conduct lawful operations in compliance with these regulations.

Nevertheless, the subject of safe operations by Mexican carriers in the United States will likely generate considerable public interest within the meaning of Executive Order 12866. The manner in which the FMCSA carries out its safety oversight responsibilities with respect to this international motor carrier transportation may be of substantial interest to the domestic motor carrier industry, the Congress, and the public at large. A regulatory evaluation was completed for the three companion NPRMs (published elsewhere in today's **Federal Register**) that implement the NAFTA entry provisions and our proposed safety monitoring system for Mexican-domiciled carriers conducting operations in the United States. This evaluation concluded that anywhere between (high estimate), to 10,000 (medium estimate) to 5,000 (low estimate) Mexican carriers would file for authority in the first year after the moratorium is lifted. The FMCSA estimates that in the first year (in the high estimate scenario), only 3,200 of these carriers would be new applicants, dropping to 2,500 in subsequent years. In the medium or low estimate scenarios, only 500 of the first-year applicants would be new, dropping to 200 in subsequent years. This is because most of the 15,000 to 5,000 Mexican carriers already are operating in the United States. Please refer to the Regulatory Evaluation for a detailed discussion on how these estimates were derived. A copy of the Regulatory Evaluation is in the docket.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (Pub. L. 96-354) (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement and Fairness Act (Public Law 104-121), requires Federal agencies to analyze the impact of rulemakings on small entities, unless the Agency certifies that the rule will not have a significant economic impact

on a substantial number of small entities.

The FMCSA is issuing this document because of the planned implementation of the NAFTA's motor carrier access provisions. A NAFTA dispute resolution tribunal recently ruled that the United States violated NAFTA by failing to allow Mexican carriers greater access to the United States.

Mexican carriers would be subject to the same safety regulations as domestic carriers when operating in the United States. The objective of this proposal, in conjunction with the two companion NPRMs published elsewhere in today's **Federal Register**, is to help determine the capability of Mexican carriers to operate safely in the United States. This proposal describes a safety oversight program applicable to Mexican-domiciled carriers for the 18-month period beginning at the time they receive authority to operate in the United States.

A review of the MCMIS census file reveals that the vast majority of Mexican carriers are small. For Mexican carriers with any trucks, the mean number of trucks was 5.1. That mean was pulled up by a small number of large carriers. Seventy-five (75) percent of Mexican carriers had three or fewer trucks, and the 95th percentile carrier had only 15 trucks. These proposals should not have any impact on small U.S.-based motor carriers.

The FMCSA cannot exempt small carriers from these proposals without seriously diminishing the agency's ability to ensure the safe operations of Mexican carriers. The majority of Mexican carriers operating in the U.S. would be small; exempting them would have the same impact as not issuing these proposals. The safety oversight plan simply places Mexican carriers on notice concerning the manner in which the FMCSA would be enforcing compliance with the FMCSRs. Therefore, FMCSA certifies that this proposed rule would not have a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a State, local or tribal government, or by the private sector of \$100 million or more in any one year must prepare a written statement incorporating various

assessments, estimates, and descriptions that are delineated in the Act.

Under this proposal, State law enforcement personnel in the four border States currently performing roadside inspections under the Motor Carrier Safety Assistance Program (MCSAP) will target for inspection Mexican carriers whose operations within the United States were previously limited to U.S. municipalities and commercial zones along the U.S.-Mexico border. Although the number of carriers subject to inspection will increase as a result of liberalized entry into the United States, additional Federal funds have been earmarked for increased inspection activity in the border States. The FMCSA has determined that the changes proposed in this rulemaking would not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999 (64 FR 43255, August 10, 1999). Consultation with States is not required when a rule is required by statute. The FMCSA, however, has determined that this action would not have significant Federalism implications or limit the policy making discretion of the States.

Comments on this conclusion are welcome and should be submitted to the docket.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) [49 U.S.C. 3501-3520], Federal agencies must determine whether requirements contained in rulemakings are subject to information collection provisions of the PRA and, if they are, obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor or require through regulations. The FMCSA has determined that this proposed regulation does not constitute an information collection with the scope or meaning of the PRA.

The FMCSA performs safety compliance assessments and enforcement activities as required by statutes and the FMCSRs. Implementation of this proposal would create no additional paperwork burden on Mexican carriers that comply with the FMCSRs. Any safety data that the FMCSA solicits from individual motor carriers regarding deficiency and/or non-compliance is not considered a collection of information because this type of response is required of such carriers as part of the usual and customary compliance and enforcement practice under the FMCSRs. Accordingly, the FMCSA has determined that this proposed action would not affect any requirements under the PRA.

National Environmental Policy Act

The agency has analyzed this proposal under of the National Environmental Policy Act of 1969 as amended [42 U.S.C. 4321 *et seq.*] and has determined under DOT Order 5610.1C (September 18, 1979) that the proposed action does not require any environmental assessment. An environmental impact statement is, therefore, not required.

List of Subjects

49 CFR Part 385

Highway Safety, Highways and roads, Motor carriers, Motor vehicle safety, and Safety fitness procedures.

For the reasons stated in the preamble, the FMCSA proposes to

amend 49 CFR part 385 as set forth below:

PART 385—SAFETY FITNESS PROCEDURES

1. The authority citation for part 385 is revised to read as follows:

Authority: 49 U.S.C. 104, 504, 521(b)(5)(A), 5113, 13901–13905, 31136, 31144, 31502, and 49 CFR 1.73.

2. Sections 385.1 through 385.19 are designated as Subpart A—General, and a new subpart B is added consisting of new §§ 385.21 through 385.31 to read as follows:

Subpart B—Safety Monitoring System for Mexican Carriers

Sec.

385.21 Safety oversight program.

385.23 Expedited action.

385.25 Suspension and revocation of Mexican carrier registration.

385.27 Administrative review.

385.29 Duration of enhanced safety oversight program.

385.31 Applicability of safety fitness and enforcement procedures.

Subpart B—Safety Monitoring System for Mexican Carriers

§ 385.21 Safety oversight program.

(a) Mexican-domiciled carriers issued registrations pursuant to 49 CFR part 365 subpart E or certificates of registration pursuant to 49 CFR part 368 are subject to a safety fitness oversight program to help determine that they comply with applicable Federal Motor Carrier Safety Regulations, Motor Vehicle Safety Standards, and Hazardous Materials Regulations and conduct safe operations. This program includes intensified monitoring through frequent roadside inspections and an evaluation of the carrier's compliance with the applicable safety regulations through a safety review conducted within 18 months after the carrier is issued a new registration or Certificate of Registration.

(b) The safety review under this section may be conducted either at the carrier's business premises or at an alternative location in the United States designated by the FMCSA. When the safety review is conducted in the United States, the carrier must make available for inspection at the designated location all records determined to be necessary to adequately evaluate the carrier's compliance with the applicable regulations.

(c) Failure to provide necessary documents upon reasonable request in connection with a safety review conducted under this section or § 385.23 will result in the suspension of the

carrier's operating authority until the documents are produced.

§ 385.23 Expedited action.

(a) A Mexican motor carrier committing any of the following violations identified through roadside inspections, or by any other means, may be subjected to an expedited safety review or issued a deficiency letter identifying the violations and directing the carrier to submit a written response demonstrating corrective action:

(1) Using drivers not possessing, or operating without, a valid Licencia Federal de Conductor (LFC) or Commercial Driver's License (CDL). A non-valid LFC or CDL includes one that is falsified, revoked, expired, or without a Hazardous Materials endorsement, when required.

(2) Operating vehicles that have been placed out of service for violations of the Commercial Vehicle Safety Alliance (CVSA) North American Standard Out-of-Service Criteria without making the required repairs.

(3) Involvement in, due to carrier act or omission, a hazardous materials incident within the United States involving a highway route controlled quantity of any of the following, as defined in 49 CFR 173.403, 173.50, 173.115, 173.132, and 173.133:

(i) A Class 7 (radioactive) material,
(ii) A Class 1, Division 1.1, 1.2, or 1.3 explosive, or
(iii) A poison inhalation Hazard Zone A or B material.

(4) Involvement in, due to carrier act or omission, two or more hazardous material incidents occurring within the United States and involving any hazardous material not listed in paragraph (a)(3) of this section and defined in 49 CFR chapter I.

(5) Using a driver who tests positive for drugs or alcohol or who refuses to submit to required drug or alcohol tests.

(6) Operating within the United States a motor vehicle that is not insured as required by 49 CFR part 387.

(7) Having an aggregate operations out of service rate of 50 percent based upon three inspections occurring within a consecutive 90-day period.

(b) Failure to respond to the deficiency letter by submitting a written response demonstrating corrective action will result in the suspension of the carrier's registration until the required showing of corrective action is submitted to the FMCSA.

§ 385.25 Suspension and revocation of Mexican carrier registration.

(a) If a safety review conducted under § 385.21 determines that a Mexican carrier does not exercise the basic safety

management controls necessary to ensure safe operations, the carrier's registration will be suspended until the FMCSA determines that the carrier has taken appropriate corrective action necessary to remedy the violations discovered in the safety review.

(b) If a safety review conducted under § 385.21 determines that a Mexican carrier does not exercise the basic safety management controls necessary to ensure safe operations, and the carrier fails to take necessary corrective action as directed by the FMCSA, or fails to submit a plan for taking necessary corrective action, the carrier's registration may be revoked after notice and an opportunity for a proceeding.

(c) If a carrier operates in violation of a suspension order issued under this subpart, its registration may be revoked after notice and an opportunity for a proceeding.

(d) Notwithstanding any provision of this subpart, a Mexican carrier is subject to the suspension and revocation provisions of 49 U.S.C. 13905 for repeated violations of DOT regulations governing its motor carrier regulations.

§ 385.27 Administrative review

(a) A Mexican-domiciled motor carrier may request the FMCSA to conduct an administrative review if it believes the FMCSA has committed an error in suspending the carrier's registration under this subpart.

(b) The motor carrier's request must explain the error it believes the FMCSA committed in suspending its registration and include any information or documents that support its argument.

(c) The motor carrier must submit its request in writing to the Chief Safety Officer, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

(d) Administrative review shall occur no later than 10 days after the carrier submits its request for review.

§ 385.29 Duration of enhanced safety oversight program.

(a) Mexican-domiciled carriers subject to this subpart will remain in the enhanced safety oversight program for 18 months from the date their conditional registration or Certificate of Registration is issued, except as provided in paragraphs (c) and (d) of this section.

(b) If, at the end of this 18-month period, the carrier's most recent safety review was satisfactory and no additional actions are pending under this subpart, the carrier's conditional registration or Certificate of Registration will become permanent.

(c) If, at the end of this 18-month period, the carrier has not undergone a

safety review, it will remain in the enhanced safety oversight program until a safety review is conducted. If the results of this safety review are satisfactory, the carrier's conditional registration or Certificate of Registration will become permanent.

(d) If, at the end of this 18-month period, the carrier's registration is suspended under § 385.25 (a), the carrier will remain in the enhanced

safety oversight program until the FMCSA either:

- (1) Determines that the carrier has taken corrective action; or
- (2) Completes measures to revoke the carrier's authority under § 385.25(b).

§ 385.31 Applicability of safety fitness and enforcement procedures.

At all times during which a Mexican-domiciled motor carrier is subject to the enhanced safety oversight program in this subpart, it is also subject to the

general safety fitness procedures established in subpart A of this part and to compliance and enforcement procedures applicable to all carriers regulated by the FMCSA.

Issued on: April 27, 2001.

Brian M. McLaughlin,

Associate Administrator for Policy and Program Development.

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