Following an examination in 2007, his optometrist noted, ''Patient has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Perkins reported that he has driven tractor-trailer combinations for 7 years, accumulating 560,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Terry W. Pope

Mr. Pope, 42, has a prosthetic left eye due to a traumatic injury sustained as a child. The visual acuity in his right eye is 20/20. Following an examination in 2007, his ophthalmologist noted, ''I, Dr. Atnip, certify that in my medical opinion, Terry W. Pope has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Pope reported that he has driven straight trucks for 16 years, accumulating 480,000 miles. He holds a Class A CDL from Tennessee. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Daniel T. Rhodes

Mr. Rhodes, 52, has a prosthetic right eye due to a retinal detachment caused by a genetic disease called Stickler's syndrome. The best corrected visual acuity in his left eye is 20/25. Following an examination in 2007, his ophthalmologist noted, ''In my medical opinion, although a one-eyed patient, he has satisfactory vision to perform driving tasks in order to operate a commercial vehicle.'' Mr. Rhodes reported that he has driven straight trucks for 31 years, accumulating 465,000 miles. He holds a Class B CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Stephen E. Shields

Mr. Shields, 56, has a prosthetic left eye due to a traumatic injury sustained as a child. The visual acuity in his right eye is 20/20. Following an examination in 2007, his optometrist noted, ''In my opinion with the long standing nature of visual impairment, Mr. Shields is safe to operate a commercial vehicle.'' Mr. Shields reported that he has driven straight trucks for 4 years, accumulating 180,000 miles, and tractor-trailer combinations for 24 years, accumulating 840,000 miles. He holds a Class A CDL from Kentucky. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ricky J. Siebels

Mr. Siebels, 46, has a prosthetic right eye due to a traumatic injury sustained as a child. The visual acuity in his left eye is 20/15. Following an examination in 2007, his optometrist noted, ''Ricky J. Siebels has sufficient vision to perform the driving tasks to operate a commercial vehicle.'' Mr. Siebels reported that he has driven straight trucks for 27 years, accumulating 405,000 miles, and tractor-trailer combinations for 14 years, accumulating 630,000 miles. He holds a Class A CDL from Nebraska. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Don S. Williams

Mr. Williams, 49, has a prosthetic right eye due to a traumatic injury sustained as a child. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2007, his ophthalmologist noted, ''It is therefore my opinion that Mr. Williams has full field of vision and would not have any difficulty driving any type of motor vehicle.'' Mr. Williams reported that he has driven straight trucks for 18 years, accumulating 381,600 miles, and tractor-trailer combinations for 6 years, accumulating 39,996 miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert L. Williams, Jr.

Mr. Williams, 44, has had a corneal scar on his right eye since childhood. The visual acuity in his right eye is 20/200 and in the left, 20/20. Following an examination in 2007, his optometrist noted, ''Because this corneal scar has been present since childhood, and Mr. Williams has safely operated a commercial vehicle for years, he can continue to do so.'' Mr. Williams reported that he has driven straight trucks for 13 years, accumulating 260,000 miles, tractor-trailer combinations for 13 years, accumulating 130,000 miles, and buses for 10 years, accumulating 100,000 miles. He holds a Class A CDL from Mississippi. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business September 17, 2007. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them 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 monitor the public docket for new material.

Issued on: August 9, 2007.

Larry W. Minor,

Associate Administrator, Policy and Program Development.

[FR Doc. E7–16201 Filed 8–16–07; 8:45 am]

BILLING CODE 4910–EX–P

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; response to public comments.

SUMMARY: The FMCSA announces its intent to proceed with a project to demonstrate the ability of Mexico-domiciled motor carriers to operate safely in the United States, beyond the commercial zones along the U.S.-Mexico border. On May 1, 2007, FMCSA published a notice in the **Federal Register** announcing its plans to initiate a project as part of the Agency's implementation of the North American Free Trade Agreement (NAFTA) cross-border trucking provisions, and requesting public comment on those plans. On June 8, 2007, FMCSA published a notice in response to section 6901(b)(2)(B) of the ''U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007'' (the 2007 Act) seeking public comment on certain additional details concerning the demonstration project. The FMCSA has reviewed, assessed and evaluated the required safety measures as noted in the previous notice, and considered all the comments received as of July 31, 2007 in response to the May 1 and June 8 notices. Once the U.S. Department of Transportation's Inspector General completes his report to Congress, as required by section 6901(b)(1) of the 2007 Act, and the Agency completes

any follow-up actions needed to address any issues that may be raised in the report, FMCSA will proceed with the demonstration project.

DATES: This notice is effective August 17, 2007.

ADDRESSES: *Docket:* Background documents or comments to the docket for this notice may be accessed through the Docket Management System (DMS) at *http://dms.dot.gov* through reference to the docket number set forth at the beginning of this notice. These docket materials may also be reviewed at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The DMS is available electronically 24 hours each day, 365 days each year.

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.*

FOR FURTHER INFORMATION CONTACT: Mr. Milt Schmidt, Division Chief, North American Borders Division, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Telephone (202) 366–4049; e-mail *milt.schmidt@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. 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 in Canada or Mexico, or owned or controlled by persons of those countries. 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.[1] 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.

Trucking issues at the U.S./Mexico border were addressed by 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)). This rule 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.

Mexico filed complaints against the United States under NAFTA's dispute resolution provisions, challenging the delay in opening the border to long-haul vehicles. An arbitration panel issued a report in February 2001 concluding that the blanket refusal to process applications of Mexico-domiciled long-haul carriers breached NAFTA. After the Administration responded to the arbitration panel decision by announcing its intent to resume the process for opening the border, Congress enacted section 350 of the Department of Transportation (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), issued pursuant to section 350, on the implementation of safety requirements at the U.S.-Mexico border. In a January 2005 follow-up report, also issued pursuant to section 350, 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.

Announcement of the Plan To Initiate a Demonstration Project

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.

On May 1, 2007, FMCSA published notice of the demonstration project in the **Federal Register** (72 FR 23883). The Agency explained that 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 must comply with all motor carrier safety laws and regulations and all other applicable U.S. laws and regulations, including those concerned with customs, immigration, vehicle emissions, employment, vehicle

[1] Commercial zones are not of uniform size, as they are primarily based on the population and size of the applicable border municipality. Thus, the San Diego, CA commercial zone is considerably larger than the Brownsville, TX commercial zone. In a limited number of cases, specific commercial zones have been established by statute or regulation.

registration and taxation, and fuel taxation.

The Agency explained that the safety performance of the participating carriers will be tracked closely by FMCSA and its State partners, a joint U.S.-Mexico monitoring group [2], and an evaluation panel [3] independent of the DOT. The FMCSA indicated the resulting data will be considered carefully before decisions are made concerning the further implementation of the NAFTA trucking provisions. The comment period for the notice ended on May 31.

On May 25, 2007, the President signed into law the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (the 2007 Act), (Pub. L. 110–28). Section 6901 of the 2007 Act requires that certain actions be taken by DOT as a condition of obligating or expending appropriated funds to grant authority to Mexico-domiciled motor carriers to operate in the United States beyond the municipalities and commercial zones on the United States-Mexico border.

On June 8, 2007, FMCSA published a notice in response to section 6901(b)(2)(B) of the 2007 Act. The Agency explained that section 6901(a) requires that grants of authority for Mexico-domiciled motor carriers to operate beyond the border commercial zones be tested first as part of a ''pilot program.'' The Agency also indicated that section 6901 required the pilot program to comply with section 350 of the 2002 DOT Appropriations Act and 49 U.S.C. 31315(c), concerning requirements for pilot programs. The comment period was originally scheduled to end on June 28, 2007; it was extended until July 9, 2007. However, the Agency has considered all comments filed as of July 31, 2007.

[2] The Department of Transportation and the Mexican Secretaria 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.

[3] The Secretary appointed former DOT Inspector General Kenneth Mead, former DOT Deputy Secretary Mortimer Downey and former House Appropriations Subcommittee 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. It will operate independently from other monitoring efforts and provide its own assessment of the project. Its conclusions will be considered carefully before a decision is made concerning the full implementation of the NAFTA trucking provisions.

II. General Discussion of Comments

The purpose for this notice-and-comment process is to provide all interested parties with the opportunity to review information published by the Agency and comment on the specific details about the demonstration project. As of July 31, FMCSA received 2,359 comments, or docket submissions, in response to the May 1 and June 8 notices. The Agency received approximately 2,330 comments from the general public, including truck drivers and small trucking companies based in the U.S. Most of these commenters expressed concerns that Mexico-domiciled trucking companies pose a safety risk to the traveling public. The remaining comments were from organizations and associations expressing their views on specific details about the demonstration project.

The Agency's announcement of its intent to proceed with the project is based on its consideration of all data and information currently available, including information submitted by the commenters. About 2,330 of the comments were submissions by individuals that were no more than a few sentences and consisted of conclusory statements indicating that Mexico-domiciled carriers are unsafe and that the demonstration project should be abandoned. These comments, most of which were submitted electronically, did not include information concerning technical (e.g. specific safety oversight procedures or processes) or legal aspects of the demonstration project or economic issues, or any other information supporting the assertions made therein. While FMCSA is not responding to these comments individually, the Agency is neither ignoring them, but instead believes that its responses to the substantive comments it has received more than adequately addresses the brief comments submitted by these individuals.

Commenters Discussing Technical and Economic Issues

The agency received detailed comments from: Advocates for Highway and Auto Safety (Advocates); AFL-CIO, Transportation Trades Department (TDD); Altshuler Berzon, LLP (Altshuler); [4] American Trucking Associations (ATA); Arkansas Trucking Association; the Demarche Alliance, Inc. (Demarche); the Free Trade Alliance (FTA); the International Brotherhood of Teamsters (Teamsters); the Owner-Operator Independent Drivers Association (OOIDA); the Oregon Department of Transportation, Motor Carrier Transportation Division (ODOT); Public Citizen; and the Truck Safety Coalition (the Coalition), a partnership between Citizens for Reliable and Safe Highways (CRASH) and Parents Against Tired Truckers (P.A.T.T.).

[4] The law firm submitted comments on behalf of the Sierra Club, Public Citizen, Environmental Law Foundation, International Brotherhood of Teamsters, Brotherhood of Teamsters, Auto and Truck Drivers Local 70, and the Owner-Operator Independent Drivers Assocation.

A. General Comments in Support of the Demonstration Project

Several commenters supported the demonstration project. The comments ranged from general remarks to reactions to opposition comments in the docket. Several commenters supported the project as important in meeting U.S. obligations under NAFTA.

For example, one of the supporters is Congressman Jeff Flake, from Arizona. Acknowledging NAFTA's continued emphasis on safety, Congressman Flake said, ''[T]he Department should move ahead with this demonstration project and I look forward to the full implementation of our NAFTA commitments.''

Other examples are the Greater San Antonio Chamber of Commerce (GSA Chamber of Commerce), the San Antonio Economic Development Foundation, Inc., and the San Antonio Hispanic Chamber of Commerce. The GSA Chamber of Commerce believes cross border trucking is critical to the competitiveness of the North American region, and specifically the Texas-Northern Mexico region. The GSA Chamber of Commerce stated:

> Regional projects like the Toyota plant in San Antonio, that source components in a just-in-time fashion from suppliers in Northern Mexico, need cross border trucking to achieve ideal efficiencies. These efficiencies are critical to making the Toyota project, and others like it, competitive with manufacturers in other regions around the world.

The San Antonio Hispanic Chamber of Commerce stated:

> In the global environment that we operate in, the strategic advantage that both the U.S. and Mexico mutually share in competing with other counties is our proximity to each other. We cannot afford to give away this strategic advantage but unfortunately continue to do so. As a result of transferring trailers prior to crossing the border into our respective countries, we continuously are

faced with unnecessary costs and time incurred at the border.

FTA believes the demonstration program is a critical step in the process of moving forward with the Nation's obligations under NAFTA. FTA stated that under the current system of moving freight from Mexico to the United States, as many as three carriers might handle a single shipment. FTA believes the current system costs consumers an average of $400 million per year and that the demonstration project would lead to reduced shipping costs.

B. General Comments in Opposition to the Demonstration Project

Most of the commenters to the May 1 and June 8 notices believe the demonstration project will create safety and economic risks, violate procedural and substantive requirements of U.S. law, or have other adverse effects. These commenters also asserted that Mexican drivers would accept lower wages, resulting in job losses for U.S. drivers. Many of the safety-related comments were based on the presumption that Mexico-domiciled carriers and drivers will be unwilling or unable to comply with U.S. laws because the carriers and drivers are governed by less stringent laws and subject to less stringent enforcement in Mexico.

The Teamsters wrote that the demonstration project will put the public in danger, and that the project ''should not proceed until it is certain that FMCSA has the ability and resources to monitor and implement this program in a way that ensures that public safety is not endangered.''

In addition, 114 members of Congress co-signed a letter to the President on the matter. A copy of the letter is in the docket referenced at the beginning of this notice. These members expressed concern about the demonstration project. They understand the President's responsibility to fulfill the United States' obligations under NAFTA but argue that the interest in opening the border should not be put ahead of public safety, homeland security, and economic vitality.

III. Comments Concerning Requirements Under the 2007 Act

A. Section 6901(a), Fulfilling the Requirements of Section 350

Comments About FMCSA's Interpretation of Section 6901(a)

Advocates believe FMCSA failed to ''fully comply'' with the section 350 requirements. Advocates also contend FMCSA may not begin the demonstration project until the Department of Transportation's Inspector General verifies the Agency has completed the tasks required under subsection (1)(E) of section 350(c) of the 2002 DOT Appropriations Act, dealing with the information infrastructure in Mexico for handling Mexican licenses.

OOIDA argued that FMCSA's interpretation that the new law is satisfied by the previously published OIG reports ''* * * violates the canons of statutory interpretation that a law may not be interpreted in a way that renders it meaningless.'' OOIDA also said it was appropriate to conclude from hearings conducted two years after the 2005 Inspector General's report that Congress ''* * * had significant questions as to whether or not DOT was in compliance with Section 350.''

FMCSA Response:

The requirements of section 350 have been satisfied through past rulemakings and other agency actions. Previous OIG reports demonstrate FMCSA's completion of the tasks listed in subsection (1)(E) of section 350(c). The Agency emphasizes that the provisions of section 350 which require rulemaking for implementation were incorporated into a series of rules published on March 19, and May 13, 2002. Under the rules adopted on March 19, 2002, FMCSA will: (1) Conduct safety examinations or pre-authorization safety audits (PASA) [5] on Mexico-domiciled carriers seeking authority to operate beyond the border zones, encompassing the nine areas required by section 350(a)(1)(B); (2) assign a distinctive U.S. DOT number to each Mexico-domiciled motor carrier operating beyond the border zones, in accordance with section 350(a)(4); (3) require Mexico-domiciled motor carriers operating beyond the border zones to certify that they will have their vehicles inspected by a certified inspector every three months, in accordance with section 350(a)(5); and (4) require Mexico-domiciled carriers to provide proof of valid insurance issued by an insurance company licensed in the United States before granting them authority to operate beyond the border zones, in accordance with section 350(a)(8).

In fulfilling other requirements of section 350(a), FMCSA will continue to exceed the requirement in section 350(a)(1)(C) that 50% of the PASAs be conducted onsite. For this demonstration project the Agency will conduct all of the PASAs onsite.

With regard to certain other requirements in section 350(a), the Agency is prepared to conduct a compliance review (CR) of all Mexico-domiciled carriers that are granted provisional operating authority within 18 months [350(a)(2)], if there is a need to do so during the 12-month demonstration project, based on certain factors. The FMCSA will prioritize long-haul Mexico-domiciled carriers for CRs based on a number of factors including the amount of time the carrier has been operating beyond the commercial zones, and the carrier's safety performance as measured through roadside inspections and crash involvement.

During the demonstration project, FMCSA and State inspectors will verify electronically the status and validity of the license of each driver of a participating Mexico-domiciled motor carrier crossing the border [section 350(a)(3)]. Enforcement officials have been provided with the means of querying the Mexican Licencia Federal Information System (LIFIS) and the FMCSA's 52nd State System, a repository of Mexico-domiciled drivers' convictions while operating vehicles in the U.S. A more detailed discussion of the process for checking the status of drivers' licenses is presented later in this notice.

The Agency will satisfy section 350(a)(6) through its routine policies and procedures. The results of roadside inspections conducted by State officials are regularly uploaded to FMCSA's databases. Each year, the results from approximately 3 million roadside inspections are uploaded to FMCSA. The results include information identifying the motor carrier, the vehicle, the driver, and any violations discovered during the inspection.

As to the requirement of section 350(a)(7), FMCSA has worked with its State partners to equip all U.S.-Mexico commercial border crossings with scales suitable for enforcement of U.S. CMV weight restrictions.

In addition, sections 350(c)(1) and 350(d) of the 2002 DOT Appropriations Act required the OIG to conduct a comprehensive review of FMCSA border operations before vehicles operated by Mexico-domiciled carriers may operate beyond the border commercial zones and to conduct periodic follow-up reviews. The OIG conducted its initial review in June 2002 and has since conducted the required follow-up reviews. Section 350(c)(2) required the Secretary of Transportation to certify in writing in a manner addressing the Inspector General's findings that the opening of the border does not pose an unacceptable safety risk to the American public before Mexico-domiciled motor carriers may operate CMVs beyond the border commercial zones. Secretary

[5] A detailed discussion of the PASA is provided later in this notice.

Norman Mineta issued that certification in November 2002, and the President thereafter ended the 1982 moratorium on the cross-border operation of Mexico-domiciled carriers beyond the border commercial zones, directing the Secretary to grant authority for such operations to qualified Mexican carriers.

In its 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.[6]

Given this background, FMCSA interprets section 6901(a) to mean that the Agency must ensure that all rules adopted pursuant to section 350 remain applicable to Mexico-domiciled motor carriers participating in the demonstration project, and that the Agency must remain in compliance with all other section 350 requirements as they relate to the demonstration project, including the requirements concerning staffing, facilities, equipment, and procedures that the OIG was required to review. The FMCSA believes it has fully satisfied the requirements of section 350 and section 6901(a).

Adequacy of Enforcement Resources

Several commenters believe there would be inadequate Federal and State enforcement resources to ensure the participating carriers and drivers comply with the demonstration project requirements. Commenters asserted that FMCSA's proposed demonstration project would create an added burden on enforcement staff and result in non-enforcement of the project requirements. Commenters also said that there would be insufficient personnel at border crossings and insufficient physical space for inspections. Commenters questioned the extent to which the Mexican government was responsible for enforcement.

Advocates believe the demonstration project ''raises the issue of whether the U.S. border inspection facilities actually have the capacity to fulfill this commitment in light of the unknown number of trucks that may participate in the [demonstration project].''

Public Citizen wrote, ''FMCSA has demonstrated little capacity to conduct compliance reviews of motor carriers.'' Public Citizen indicated that in 2003, 12,000 compliance reviews were conducted out of 670,000 registered carriers. Public Citizen also noted that ''the notice does not suggest that new inspectors will be hired to undertake the burden [created by the demonstration project], nor is there an estimate of what the burden to inspectors would be to carry out these compliance reviews.''

The Teamsters believe the Mexican government failed to initiate safety requirements, and entered into negotiation for such requirements only under pressure to facilitate Mexican trucks coming into the United States. The Teamsters said, ''Without sufficient enforcement on the Mexican side of the border that establishes a strong no-tolerance policy, Mexican truck drivers will arrive at the U.S. border without the benefit of government and industry practices that deter this kind of [non-compliant] behavior.'' The Teamsters also believe FMCSA is relying heavily on State and local law enforcement to keep watch over a vast expanse of territory and prevent those trucks authorized to operate only in the commercial zones from entering other parts of the United States. The Teamsters argued that those responsible for the task must receive the proper training so that they know what process to follow when they have to put a Mexican truck or driver out of service; and that there is no evidence presented by FMCSA that this has been accomplished. The ATA echoed these concerns.

OOIDA and Altshuler asked for more information on the demonstration project training for U.S. enforcement personnel. Altshuler asserted, ''The Notice does not identify when the training and guidance will occur, who will be trained, or how many individuals will be trained.'' OOIDA stated that it has received almost no indication from State enforcement officials that they have been required to address this issue.

The ATA, noting the complexities of cabotage regulations, also requested information on the cabotage regulations enforcement training materials for State and local law enforcers developed by the International Association of Chiefs of Police and FMCSA.

FMCSA Response:

The FMCSA and its State partners have sufficient staff, facilities, equipment, and procedures in place to meet the requirements of section 350. This conclusion is based on the Agency's experience providing safety oversight for Mexico-domiciled motor carriers currently authorized to operate in the 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 Mexican motor carriers.

Section 350 of the 2002 DOT Appropriations Act provided more than $25,000,000 for the salary, expense, and capital costs associated with implementing the requirements of the statute. This funding was ''in addition to amounts otherwise made available in the Act'' and was continued in each subsequent appropriations bill. Further, the statute specifies that resources for implementing the cross-border provisions are not to be fulfilled using personnel from other programs, thus FMCSA was specifically required to hire staff for this purpose. The FMCSA staff hired pursuant to this funding are specifically assigned to enforce U.S. safety requirements for Mexico-domiciled carriers. The FMCSA currently employs 274 Federal personnel dedicated to border enforcement activities.

In response to the Teamsters' concerns about the burden on the States for providing safety oversight for Mexico-domiciled carriers, FMCSA is authorized under 49 U.S.C. 31107 to provide border enforcement grants for carrying out commercial motor vehicle safety programs and related enforcement activities and projects. The Agency's State partners along the border employ 349 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. In 2006, approximately 1,880 State motor carrier safety inspectors received North American Standard (NAS) inspection procedures training. To date in 2007, approximately 1,602 State motor carrier safety inspectors have completed this 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 Commercial Motor Vehicle (CMV) Awareness Training sessions were conducted in the last quarter of 2006. Approximately 245 officers were certified to train law enforcement officers throughout the United States. During the months of August and September 2007, it is anticipated that five Foreign CMV Awareness training sessions will be conducted, training an additional 60 trainers. The training

[6] The OIG's latest follow-up report has been submitted to Congress and is expected to be made public near the publication date of this notice.

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 commercial zones. Therefore, not only has FMCSA provided funding resources to support the States' role in providing Safety oversight for Mexico-domiciled carriers operating in the U.S., the Agency has provided training.

The FMCSA notes that the number of Mexico-domiciled carriers and vehicles that will participate in the demonstration project is extremely small compared to the population of carriers and vehicles currently operating in the commercial zones. Most of the motor carriers that would participate in the demonstration project already have authority to operate in the commercial zones so their participation in the project would not result in a significant increase in the population of Mexico-domiciled 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 demonstration project will increase significantly because the cargo carried by the long-haul trucks would have crossed the border in any event via short-haul, commercial zone trucks. Based on the PASA information presented in the June 8 notice, the Mexico-domiciled carriers for covered in the table or chart identified 142 drivers and 155 vehicles that were intended for use in the United States, for operations beyond the commercial zones during the demonstration project. Thus, the project should create no additional inspection burden at the border.

With regard to comments about Mexican safety regulations, FMCSA emphasizes that all participating motor carriers must comply with, and the Agency and its State partners will enforce, all U.S. motor carrier safety laws and regulations. Moreover, no commenter articulated any reasonable basis to support their presumption that Mexico-domiciled motor carriers cannot or will not comply with strictly enforced U.S. safety rules because of an absence of similar requirements in Mexico, and FMCSA is unaware that any evidence exists supporting this presumption. Indeed, the experience of the commercial zone carriers demonstrates that the opposite is true: Under the border inspection regime, which long-haul carriers will also be subject to, the Mexican carriers achieved a vehicle out-of-service rate in 2006 (21.51%) that is lower than the 2006 out-of-service rate for U.S. carriers (24.73%). The driver out-of-service rates in 2006 were 1.29% for Mexico-domiciled carriers and 7.67% for U.S.-domiciled carriers. Finally, all participating carriers will be subjected to a PASA, and failure to demonstrate adequate safety management controls will result in the carrier failing the PASA; thus rendering the carrier ineligible to participate in the demonstration project.

With regard to PASAs, FMCSA has the necessary resources, as noted in the OIG's 2003 and 2005 audits, to conduct an on-site PASA for each carrier that is eligible to participate in the demonstration project. The Agency has conducted PASA training for its enforcement personnel in preparation for the demonstration project and they are fully prepared to complete the necessary PASA for each eligible carrier. A copy of the PASA training material is in the docket referenced at the beginning of this notice.

In addition, FMCSA has also provided training to Federal and State enforcement personnel concerning cabotage. A discussion of commenters' concerns about cabotage and the training provided to ensure strict enforcement of the prohibition against Mexico-domiciled carriers engaging in cabotage is provided later in this notice.

Obtaining Commercial Vehicle Safety Alliance (CVSA) Decals

ODOT supported the requirement that long-haul, Mexico-domiciled motor carriers must display a current CVSA decal, but indicated this may result in out-of-service (OOS) trucks being stranded for an unreasonable period of time. ODOT noted that Oregon has fewer Level 1 certified inspectors than Level 2 certified inspectors, so there may be situations when a Level 1 inspector cannot be expeditiously dispatched to check an OOS truck, verify repairs, and issue a new CVSA decal. ODOT concluded that FMCSA should inform states if there is any expectation to inspect a Mexican carrier's truck placed OOS within a certain period. ODOT suggested the listing of a failure to have a current CVSA decal as a violation on the inspection report, then DOT could investigate this allegation after the inspection and determine if the Mexican carrier should continue in the demonstration project.

FMCSA Response:

The FMCSA understands the concerns of ODOT and other State motor carrier safety agencies. The Agency emphasizes Mexico-domiciled vehicles that fail to meet certain safety requirements are to be treated the same as other vehicles operated in the U.S. If a Mexico-domiciled vehicle is found to be in violation of a rule and the violation is included in the OOS criteria, the vehicle must be placed out of service, regardless of the availability of certified Federal or State enforcement personnel to re-inspect the vehicle and issue a CVSA decal. Safety is FMCSA's top priority, and safety will not be compromised for scheduling convenience.

The FMCSA and its State partners have adopted a policy of stopping every vehicle operated by a participating Mexico-domiciled motor carrier, every time it crosses the U.S.-Mexico border. During the stop, the driver will be checked to ensure he has a valid license. If the vehicle is being operated under the control of a Mexico-domiciled carrier with authority to operate beyond the commercial zones, and it does not display a current CVSA decal, the vehicle will be subjected to a safety inspection.

The initial burden for ensuring that Mexico-domiciled vehicles are inspected falls on FMCSA and the States of Arizona, California, New Mexico, and Texas because they must ensure that only those vehicles that display a current CVSA decal are allowed to proceed beyond the commercial zones. As required by section 350 of the 2002 DOT Appropriations Act, any vehicle that does not display a current CVSA decal must be stopped for an inspection and prohibited from leaving the border area until it passes an inspection. The FMCSA will continue working with its State partners along the border to ensure every truck operated by a carrier with long-haul authority is checked for a CVSA decal each time it enters the U.S.

Congress authorized, and FMCSA provides, Federal grants to these border States to cover the financial burden for assisting FMCSA in providing motor carrier safety oversight along the U.S.-Mexico border. Presently, the resources go toward ensuring that Mexico-domiciled motor carriers operating in the commercial zones along the border comply with applicable safety requirements. Under the demonstration project, long-haul Mexico-domiciled motor carriers, unlike commercial zone Mexican carriers, and U.S. and Canadian carriers operating in the U.S., are not authorized to operate in the U.S. without a valid CVSA decal. Any CMVs operated by long-haul Mexico-domiciled carriers that do not display a current CVSA decal will be stopped for

a safety inspection; the vehicle must pass the inspection and have a CVSA decal affixed to it by a Federal or State inspector before the driver is allowed to proceed on his trip.

B. Section 6901(a), Fulfilling the Requirements of 49 U.S.C. 31315

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 level of safety that would otherwise be achieved through compliance with the FMCSRs. Pilot programs are also required to have the following six elements:

a. A scheduled life of not more than 3 years.

b. A specific data collection and safety analysis plan that identifies a method for comparison.

c. A reasonable number of participants necessary to yield statistically valid findings.

d. An oversight plan to ensure participants comply with the terms and conditions of the program.

e. Adequate countermeasures to protect the public health and safety of study participants and the general public.

f. A plan to inform State partners and the public about the pilot program and to identify approved participants to safety compliance and enforcement personnel and to the public.

Verifying Carrier Safety Compliance

Four commenters addressed safety compliance verification. Altshuler argued the program plan does not identify ''[a]n oversight plan to ensure that participants comply with the terms and conditions of participation'' [49 U.S.C. 31315(c)(2)(D)]. Altshuler noted that the description of the bi-national monitoring group states only that the group will ''supervise the implementation of the demonstration project and * * * find solutions to issues affecting the operational performance of the project.'' Altshuler does not believe that the monitoring group can ensure compliance by the project participants, and that it is unclear whether the bi-national monitoring group has a real oversight role.

In addition, Altshuler said that the notice asserts that Federal and State auditors, inspectors, and investigators will have ''knowledge and understanding'' of the program, and of potential enforcement measures. Altshuler then points out that the notice does not identify when the training and guidance will occur to provide ''knowledge and understanding,'' who is trained, or how many individuals will be trained. Altshuler argued that there is no way of determining whether the proposed activities will ''ensure that participants comply with the terms and conditions of participation.''

The Teamsters stated that, even with enforcement, there seems to be a willingness on the part of Mexican carriers and drivers to ignore some of the basic requirements for operating in the commercial zone. The Teamsters noted that the SafeStat figures for 2005 show 9,205 specified traffic violations by Mexican carriers. Of that number, 8,684 are size and weight violations.

Public Citizen stated that the 108 compliance reviews conducted by FMCSA of Mexico-domiciled carriers in 2005 represents less than 1 percent of the 14,000 carriers operating in the border zone.

FMCSA Response:

The FMCSA and its State partners will ensure compliance with the requirements of the demonstration project the same way the Agency and the States ensure that Mexico-domiciled motor carriers operating in the commercial zones comply with the applicable safety regulations. The FMCSA and the States have a robust safety oversight program for Mexico-domiciled carriers that are currently allowed to operate commercial motor vehicles in the U.S. Further, in order to assist in ensuring compliance, FMCSA imposed the following on Mexico-domiciled carriers participating in the demonstration program: (1) The application for long-haul operating authority, which includes requirements for proof of a continuous financial responsibility versus trip insurance used by commercial zone carriers; (2) successful completion of the PASA prior to being granted provisional authority; (3) the requirement to display a valid CVSA decal; and (4) the requirement to have a special designation in their USDOT identification numbers to allow enforcement officials to readily distinguish between commercial zone carriers and those authorized to go beyond the commercial zones.

In addition, section 350 and 49 CFR part 385 require that a compliance review (CR) be conducted within 18 months of the carrier being granted provisional operating authority. In the context of the 12-month demonstration project, FMCSA will prioritize long-haul Mexico-domiciled carriers for CRs based on a number of factors such as the carrier's safety performance as measured through roadside inspections and crash involvement.

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 carriers operating in U.S. commercial zones than the group that will participate in the demonstration project. As such, the Agency effectively already has a plan in place to ensure participants comply with the terms and conditions of the project; full compliance with existing U.S. safety regulations and cabotage rules will be required, as is the case with Mexico-domiciled carriers operating in the border commercial zones, and the enforcement of those requirements is already well established.

Table 1 below provides roadside inspection data for fiscal years 2001 through the present. For five consecutive fiscal years (including fiscal year 2007, which ends on September 30, 2007), the FMCSA and its State partners have increased the number of inspections, and currently conduct in excess of 125,000 inspections each year.

TABLE 1.—TRUCK INSPECTION (NON-HAZMAT) FOR MEXICO-DOMICILED CARRIERS IN THE COMMERCIAL ZONES

[Based on MCMIS snapshot as of June 22, 2007]

Fiscal year	Inspection totals	Total driver inspections	Total driver OOS inspections	Driver OOS rate (percent)	Total vehicle inspections	Total vehicle OOS inspections	Vehicle OOS rate (percent)
2001	59,171	59,038	4,951	8.39	54,481	18,280	33.55
2002	80,464	80,149	5,957	7.43	73,088	19,872	27.19
2003	127,855	127,700	4,576	3.58	113,610	27,208	23.95
2004	129,004	128,721	2,575	2.00	119,031	28,810	24.20
2005	156,821	156,688	1,837	1.17	143,601	31,679	22.06
2006	177,124	176,722	2,274	1.29	165,320	35,556	21.51

TABLE 1.—TRUCK INSPECTION (NON-HAZMAT) FOR MEXICO-DOMICILED CARRIERS IN THE COMMERCIAL ZONES—Continued

[Based on MCMIS snapshot as of June 22, 2007]

Fiscal year	Inspection totals	Total driver inspections	Total driver OOS inspections	Driver OOS rate (percent)	Total vehicle inspections	Total vehicle OOS inspections	Vehicle OOS rate (percent)
2007	140,562	140,519	1,486	1.06	128,358	27,859	21.70

Note:
FY2007—Inspections that occurred between October 1, 2006 and June 22, 2007.
Vehicle Inspections—Level 1, 2, and 5 Inspections.
Driver Inspections—Level 1, 2, 3 Inspections.

As Table 1 demonstrates, enforcing the safety regulations against Mexico-domiciled motor carriers is not a new concept for the Agency and its State motor carrier safety enforcement partners. The only significant enforcement change that will occur during the demonstration project is that States beyond the four border States will now encounter Mexico-domiciled carriers. These State motor carrier safety enforcement personnel are already trained and experienced in motor carrier safety, having conducted more than 3 million roadside inspections each year. Their experience demonstrates they are aware of how to enforce motor carrier safety requirements, including rules pertaining to operating authority.

Additionally, FMCSA has developed, in cooperation with the International Association of Chiefs of Police, a ''Foreign Commercial Motor Vehicle Awareness Training Program'' which includes a brochure entitled ''Understanding the Basic Operating Requirements of Foreign-Based Motor Carriers, CMVs, and Drivers.'' The purpose of the program is to inform patrol officers (officers that do not conduct motor carrier safety enforcement activities) of potential safety and enforcement issues involving foreign-based CMVs and drivers operating outside commercial zones. The information will be useful during a routine traffic stop or in response to a crash. The training is being provided to local law enforcement personnel nationwide by certified roadside inspectors.

With regard to comments about the role of the monitoring group, the FMCSA emphasizes that neither the group nor the independent evaluation panel established by DOT has responsibilities for ensuring that participating motor carriers comply with the requirements of the project. The roles of the monitoring group and evaluation panel are explained above.

As for the number of compliance reviews conducted on Mexico-domiciled motor carriers, FMCSA emphasizes that the CR is an enforcement tool used to assess the safety fitness of motor carriers. The selection of carriers is prioritized based on a number of factors, such as high crash rates, roadside inspection results, etc. Thus, the number of CRs conducted is based on the number of high-risk carriers that have been identified based on those factors, not on the total number of carriers subject to FMCSA's jurisdiction. The Agency has sufficient resources to ensure that high-risk carriers are evaluated in a timely manner. The Agency will not conduct CRs for the sake of meeting a quota without regard for the overall safety outcomes of such activities in terms of crash prevention. Under the demonstration program the Agency will prioritize long-haul Mexico-domiciled carriers for CRs based on a number of factors including the amount of time the carrier has operating beyond the commercial zones, and the carrier's safety performance as measured through roadside inspections and crash involvement.

In response to Altshuler's comments about specific details on training of Federal and State enforcement personnel to verify carriers comply with the terms of the demonstration project, FMCSA provides a detailed discussion elsewhere in this notice.

With regard to the Teamsters' comment about Mexico-domiciled carriers' level of compliance with U.S. safety requirements, the inspection data above demonstrates the exact opposite. When the inspection data are viewed in the context of the number of Mexico-domiciled CMV crossings into the U.S. each year, the number of traffic violations cited by the Teamsters suggests the vast majority of Mexico-domiciled drivers comply with U.S. traffic rules. Each year there are approximately 4.5 million Mexican CMV crossings into the United States. Putting the Teamsters figure in context, 8,684 size and weight violations represents a violation rate of only two-tenths of one percent. Further, as to the remaining 521 traffic violations, for 4.5 million trips, this figure is far from alarming.

One-Year Limit for the Demonstration Project

Advocates and Public Citizen both argued against truncating the test period from 3 years authorized by 49 U.S.C. 31315(c) to 1 year. Both commenters questioned whether the duration of the project will allow for the collection of sufficient data for accurate and complete analysis to make credible and defensible generalizations about the safety of the project.

Advocates made reference to Agency statements indicating that the agency plans to increase participation by adding 25 motor carriers per month over a 4-month period. Advocates believe this results in a lack of clarity whether the previously announced 1-year time limit for the project will stretch to 16 months in order to give each motor carrier one year of experience participating in the project. Advocates also stated that the notice indicated that ''up to'' 100 Mexico-domiciled motor carriers will be selected, thus the final number of selected carriers is unknown.

ATA believes the information provided by the Agency suggests that after the 1-year project period, motor carriers do not have to reapply under their respective country's application process to continue operations. ATA sought further clarification from FMCSA and the Secretaria de Comunaciones y Transportes (SCT) regarding the ''post-demonstration project'' for continued cross-border operations after successful review of the 1-year time period.

FMCSA Response:

The FMCSA believes that a 1-year demonstration project is sufficient to determine whether the safety oversight program the Agency adopted in response to section 350 of the 2002 DOT Appropriations Act will enable the Agency to ensure that Mexico-domiciled motor carriers operating beyond the border zones can achieve a level of safety equivalent to, or greater than, the

level attained by other motor carriers operating in the U.S.

Although section 6901 of the 2007 Act requires that the demonstration project meet the requirements of 49 U.S.C. 31315(c) concerning pilot programs, that statute does not require that such programs be 3 years in duration. Section 31315(c)(1)(A) provides for a ''scheduled life of each pilot program of not more than 3 years.'' Therefore, the statute sets 3 years as a maximum, not a minimum.

The Agency will allow up to 100 carriers to participate in the project. This represents a significant percentage—100 out of 989 carriers, or about 10%—of the motor carriers that had submitted applications for operating authority prior to the announcement of the Agency's plans to conduct the demonstration project and will generate more than enough data for a meaningful safety analysis. The Agency acknowledges that the number of participating carriers may fall below the goal of 100. However, the Agency believes there is sufficient interest in the project to ensure an appropriate number of participants.

In addition to the number of participants, the volume of the data depends on the frequency with which the participating carriers operate in the United States. For example, if few trips are made, there will be few safety inspections at the border and even fewer in non-border States. The FMCSA is not aware of any information suggesting that the amount of freight transported during the project would vary significantly based on the scheduled life of the project. The Agency believes the decision to limit the project to 1 year is appropriate in light of the number of carriers, drivers, vehicles, and their exposure rate during the project.

With regard to the ATA comment, FMCSA contemplates that the demonstration will last for one year from the date of FMCSA's initial grant of authority.

Participating Carrier Number and Diversity

The Teamsters, Public Citizen, the Coalition, and Altshuler believe that the selection of motor carriers to participate in the project would negatively affect the data. Public Citizen argued that the participants might not be representative of the entire universe of eligible carriers. The Coalition believes the Agency has not completed preparations for organizing and conducting a safe and scientifically valid pilot program as required by 49 U.S.C. 31315(c).

The Teamsters argued that selection bias in favor of the safest carriers will slant the data on violations, crashes, and other compliance issues. They claimed that this non-representative data might then be misused to proclaim the project a success and justify a full opening of the border after the 1-year period.

Similarly, Advocates believe the Agency also fails to fulfill section 6901(c)(3), which directs the Secretary to ensure that ''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.'' Advocates argued that ''cherry-picking'' only scrupulously screened Mexican motor carriers and not comparing them against a comparable cohort, but against all U.S. motor carriers, is not selecting ''a representative'' sample.

Advocates noted that FMCSA provided information on the status of 107 motor carriers, but has not provided any details about why each motor carrier passed, failed, or withdrew its application.

Altshuler argued the Agency has offered insufficient information about who will participate in the project. Also, Altshuler stated that the demonstration project does not include a ''plan to inform State partners and the public about the pilot program and to identify approved participants to safety compliance and enforcement personnel and to the public'' [49 U.S.C. 31315(c)(2)(F)]. Altshuler argued the selection of carriers appears to be a wholly closed process, with no opportunity for the public to comment on applications of particular carriers. The law firm noted that there is no plan to educate the public or the State and local authorities about the program or the carriers participating in it.

In addition, Altshuler stated that the notice provides incomplete information regarding the program's reciprocal nature. Altshuler said the notice indicates that the proposed program is ''reciprocal,'' and that ''[u]p 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.'' However, the commenter stated the notice provides no information as to the specific terms on which U.S.-domiciled motor carriers may operate in Mexico. Without this information, the commenter argued that there is no way to assess whether these terms are actually similar to those proposed in the program.

FMCSA Response:

Section 350 of the 2002 DOT Appropriations Act and section 6901 of the 2007 Act clearly prescribe what FMCSA must do prior to granting operating authority for long-haul Mexico-domiciled carriers to operate in the U.S. The FMCSA will ensure, consistent with Congress' expressed intent, only safe carriers are permitted to operate in the U.S.

The Agency has selected carriers from among those that submitted an application for authority to operate beyond commercial zones since the Agency began accepting applications under its 2002 application regulation. The Agency will allow into the program only those carriers that meet the safety criteria, as demonstrated through the successful completion of the PASA. To the extent that there is an opportunity to achieve some geographic and operating size diversity, the Agency will select carriers accordingly. However, safety is FMCSA's top priority. The Agency will not compromise highway safety for the sake of achieving carrier diversity.

In response to Advocates comment about the PASA information presented in the June 8 notice, the notice includes details about why motor carriers failed the PASA. For each carrier that failed the PASA, the Agency identified which of the six factors the carrier failed to satisfy.

The FMCSA disagrees with comments alleging that the Agency is manipulating the outcome of the project by selecting only those carriers with the best safety performance records. The Agency's selection criteria do not impose safety performance standards for the demonstration project that are beyond those provided in the safety regulations, including the PASA requirements. These are the same regulations that would apply were Mexican carriers to be considered for long-haul operating authority outside the context of a demonstration project. Participating carriers must have safety performance records that reflect the ability to operate safely in the U.S., and safety management controls to demonstrate the willingness to comply with U.S. safety regulations. The FMCSA expects that participating carriers to demonstrate the ability to operate safely.

With regard to Altshuler's remarks about the opportunity for public comment on individual carriers applications for operating authority, the FMCSA emphasizes that the public has the opportunity to comment in response to the FMCSA Register on every application that the Agency proposes to grant. As explained in the June 8 notice, if the carrier has successfully completed the PASA, FMCSA publishes the 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* 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 carrier's application on the grounds that the 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. The Agency's rules governing protests, codified at 49 CFR part 365, subpart B, are the same rules applicable to protesting operating authority requests filed by U.S. and Canada-domiciled carriers.

In addition, as required by section 6901(b)(2)(B)(ii) of the 2007 Act, FMCSA will publish in the **Federal Register**, and provide for public comment, comprehensive data and information on PASA's conducted after the date of enactment of the 2007 Act. The Agency will publish information about PASA's completed since the list presented in the June 8 notice was prepared; the June 8 notice covered PASA's completed as of May 31, 2007. Therefore, the public has two opportunities to comment on Mexico-domiciled carriers' applications: In response to the FMCSA Register, and in response to the **Federal Register** notice required by section 6901(b)(2)(B)(ii). Additional carriers can be added to the ongoing program after PASA information about them is published and an adequate opportunity for comment is provided.

In response to the comment about reciprocity for U.S. carriers, FMCSA continues to work closely with the Mexican government to ensure that up to 100 U.S.-domiciled carriers are granted authority to operate in Mexico during the demonstration project. The Agency is working 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. The project will not commence until such reciprocity is provided. However, FMCSA is not required to provide notice and comment on the Mexican government's application process for obtaining operating authority, or its criteria for selecting U.S.-domiciled carriers.

In response to comments about the plan to inform the States about the program, FMCSA reiterates the Agency and its State partners have extensive experience providing safety oversight for a much larger population of Mexico-domiciled carriers operating in U.S. commercial zones than the group that will participate in the demonstration project. The Agency will inform State motor carrier safety enforcement personnel about the demonstration project through its existing routine methods of sharing with them information about new programs. These methods include, but are not limited to, conferences, meetings, and in-service-training. For example, the Agency has worked with the IACP Border Group to discuss the demonstration project, including meetings, memoranda and e-mail communications.[7] In addition, the MX suffix on their USDOT numbers will identify motor carriers participating in the demonstration project to the public at large.

For law enforcement officials that do not routinely handle CMV enforcement, the FMCSA has developed, as discussed above in this notice, a ''Foreign Commercial Motor Vehicle Awareness Training Program'' which includes a brochure entitled ''Understanding the Basic Operating Requirements of Foreign-Based Motor Carriers, CMVs, and Drivers. The purpose of the program is to inform patrol officers of potential safety and enforcement issues involving foreign-based CMVs and drivers operating outside commercial zones.

C. Section 6901(b)(2)(B)(i)—Comprehensive PASA Information

Altshuler does not believe FMCSA provided sufficient notice and opportunity to comment on the PASAs to satisfy the requirements of section 6901 of the 2007 Act. Altshuler stated the PASA data provided shows that 33 of 107 carriers have passed the PASAs and that at least nine carriers who have applied to participate in the program are waiting to have PASAs scheduled. Altshuler argues the 2007 Act requires the Secretary to publish PASA information regarding carriers participating in the project prior to the initiation of the demonstration project but nothing in FMCSA's June 8 notice explains when the Agency intends to publish a **Federal Register** notice with the PASA results for the remaining carriers.

In addition, Altshuler stated that the June 8 notice does not explain what agency action will constitute initiation of the program, and thus would trigger a cut-off by which all PASA information must have been made public and available for comment. Altshuler argues that until FMCSA has published a notice and provided an opportunity for public comment on the PASA information for all the anticipated participants in the proposed pilot program, that Agency cannot initiate the program.

Altshuler, Advocates, and Public Citizen questioned the accuracy of certain PASA information presented in the June 8 notice. For example, Altshuler explained Luciano Padilla Martinez (USDOT No. 557972), listed in row 12 of the PASA results table, is shown as having 3 vehicles it intends to operate in the U.S. in Table 2, while the carrier is shown as having 6 vehicles that it intends to operate in the U.S. and have current CVSA decals in Table 4. Similarly, Francisco Ulloa Montano (USDOT No. 817872), listed in row 45, is shown as having 7 vehicles it intends to operate in the U.S. but Table 4 indicates that only 3 vehicles were inspected during the PASA, with 2 of the 3 receiving CVSA decals.

Public Citizen and Advocates noted that 6 of the 33 motor carriers listed as having ''passed'' the PASA are not listed as having met the five mandatory safety elements required for column J. Public Citizen said ''The fact that it is unclear whether or not nearly one fifth of the motor carriers asserted to have 'passed' the PASA have actually met FMCSA's mandatory requirements is an alarming error in the agency's data.'' In commenting about carriers that withdrew their applications for long-haul operating authority, Public Citizen stated '' * * * there is no explanation as to why a plurality of the carriers withdrew their applications and whether this fact should be read as an admission of failure or not.''

FMCSA Response:

The FMCSA does not believe the specific questions they raised about the PASA information presented in the June 8 notice supports assertions that the Agency failed to provide sufficient opportunity for public comment about the PASAs conducted. Among other things, the 2007 Act does not require data and information on PASAs for all carriers that will ultimately participate in the demonstration project to be subject to notice and comment through publication in the **Federal Register** before the program can begin. The statute is satisfied, if prior to the program's initiation, such notice and

[7] A southern border state Steering Committee was established to review policies, evaluate procedures and advise the FMCSA on matters of concern to law enforcement along the U.S.-Mexico border. The Steering Committee meets as needed to study issues relating to the effect of the NAFTA on the law enforcement and commercial vehicle regulation along the border. Membership of this committee consists of the chief administrators of the state agencies responsible for commercial vehicle safety and enforcement in the four southern Border States (CA, AZ, NM, and TX).

opportunity for comment is provided with respect to PASAs for all carriers that will initially participate. Additional carriers can be added to the ongoing program after PASA information about them is published and an adequate opportunity for comment on it is provided. The Agency thus fulfilled the requirements of section 6901 of the 2007 Act for providing comprehensive information through its June 8 notice, and through the inclusion in the public docket, of its February 21, 2007, guidance memorandum, ''Conducting the Pre-Authorization Safety Audit,'' and a sample PASA report.

The PASA memorandum explains how the PASAs are to be conducted by FMCSA personnel, the documentation the motor carrier will need for review by the safety auditor during the PASA, and the procedures the auditor will follow while using the FMCSA's Compliance Analysis and Performance Review Information (CAPRI) software. The sample PASA report provides a representative sample of a completed PASA so that all interested parties will have the opportunity to better understand all the topics reviewed in a PASA and how the audit is documented.

The FMCSA emphasizes that the Agency has not yet initiated the demonstration project. The fact that a significant amount of preparatory work has been completed, including conducting numerous PASAs, does not mean that the demonstration project has already started. The Agency has not granted any Mexico-domiciled motor carriers provisional operating authority to conduct operations beyond the commercial zones. The Agency will not grant such authority, which would represent the start of the demonstration project, until the Inspector General completes his report to Congress, as required by section 6901(b)(1) of the 2007 Act, and the Agency completes any follow-up actions needed to address any issues that may be raised in the report.

As to Altshuler's comment about PASA results for carriers that were not identified as passing the PASA in the June 8 notice, FMCSA will publish PASA results for additional carriers in the **Federal Register,** as required by section 6901.

With regard to comments about the accuracy of the information presented in the June 8 notice, FMCSA notes that in the case of 6 motor carriers that were identified as having passed the PASA, the Agency inadvertently omitted ''yes'' in ''Column J—Passed Verification 5 Elements.'' All 6 motor carriers passed all 5 elements or factors identified in the table.

On the subject of vehicle inspections, the Agency's PASA memorandum explains the policy for conducting vehicle inspections. Auditors must conduct an inspection on all available CMVs that have been identified as long-haul vehicles if those vehicles have not already received a decal required by 49 CFR 385.103(c). Therefore, there may be one or more PASAs during which vehicles are not inspected if it has been determined the vehicles have already been inspected and received a CVSA decal or the vehicle is not available because it is in transportation during the audit. The Agency emphasizes that any vehicle operated by a Mexico-domiciled long-haul carrier that does not display a current CVSA decal will be stopped for an inspection as it crosses the border. Unless the vehicle passes the inspection and receives a CVSA decal, it will not be allowed to operate in the U.S.

In response to Public Citizens' comment about carriers withdrawing their applications, FMCSA is not aware of the reasons for these withdrawals and, in any event, is not required to provide an explanation why a motor carrier withdraws its application for operating authority. Such disclosure is not required for U.S.- or Canada-domiciled carriers and there is no reason why it should be an issue for the demonstration project—carriers that withdraw their applications obviously cannot participate in the project.

Section 6901(b)(2)(B)(ii)—Measures To Protect Health and Safety General Motor Carrier Safety and Environmental Compliance Concerns

Numerous commenters expressed concern that demonstration project participants would not comply with various safety and environmental regulations. These commenters discussed the differences between U.S. and Mexican regulatory requirements and also expressed a concern that Mexican carriers will use trucks that fail to meet the standards U.S. carriers must meet.

Advocates believe ''the substantial differences between the safety regulatory regimes of the United States and Mexico will render many vehicles and drivers from Mexico ill prepared to meet U.S. safety requirements and to operate safely on U.S. highways.'' Advocates claimed that ''Mexican regulations do not appear to require truck drivers to keep records of their hours of service [HOS] to show compliance for enforcement purposes or for motor carrier safety inspections, safety audits, or compliance reviews.''

Advocates argued that Mexican carriers would falsify applications and CMV certifications to show compliance with U.S. regulations and obtain U.S. operating authority.

Numerous individual commenters submitted letters asserting that when enforcement authorities stop Mexican trucks on U.S. highways, they find high rates of poorly adjusted brakes and inoperable lamps. Public Citizen also made this assertion.

Three commenters expressed environmental concerns. Altshuler pointed out that the **Federal Register** notice states that ''[p]articipating motor carriers will be required to comply with all State and Federal environmental and emission regulations'' but provides no information that would indicate that the program participants would be able to comply with State and Federal environmental law, nor does it reflect the establishment of any enforcement mechanisms to ensure such compliance. Altshuler stated that FMCSA should provide detailed information to the public and to the Federal and State environmental agencies charged with monitoring emissions and enforcing emissions standards as to the types, manufacturers, and model years of the engines in the participating vehicles. Altshuler believes FMCSA also should publish any additional information that shows that the participating vehicles will conform to emissions standards at the time they enter the U.S., as required by Federal law. The law firm argued that FMCSA should explain how it intends to work with the Federal and State environmental enforcement agencies to ensure compliance, and should provide a plan that at a minimum requires initial emission inspections of the participating vehicles, as well as inspections of every vehicle that enters the U.S.

Altshuler also stated that the notice fails to provide information sufficient to determine whether the vehicles approved for participation in the pilot program will employ so-called ''defeat devices'' of the kind prohibited by consent decrees entered into by the Environmental Protection Agency, the Department of Justice, and certain engine manufacturers. Altshuler believes FMCSA should inspect the vehicles of participating carriers to ensure that their engines do not have defeat devices, and should prohibit any carrier that uses vehicles with such engines from participating in the pilot program.

Demarche expressed concern that the demonstration project's impact on the environment will negatively affect disadvantaged communities. The

commenter noted that the probability for minority communities, specifically African-Americans, to live near industrial areas is much higher than other racial and ethnic groups. Demarche Alliance also noted that recent studies have shown that highly concentrated minority populations are predisposed to develop diseases related to elevated levels of air toxins. The commenter concluded with several data illustrating the negative environmental impacts of the demonstration project.

OOIDA believes an example of environmental considerations being ignored is that new trucks sold in Mexico are not required to meet current U.S. emission standards. OOIDA states that Congress clearly intends DOT to address the environmental impacts of the demonstration project.

FMCSA Response:

The FMCSA believes commenters' concerns about adverse environmental effects of the demonstration project are unwarranted.

First, as noted previously, Mexican carriers operating in the United States must comply with all applicable Federal and State laws, including those related to the environment. The 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 Mexican carriers, just as they have done for years with respect to the commercial zone carriers and U.S. carriers.

Second, FMCSA does not have statutory authority to enforce Federal environmental laws and regulations. The Agency cannot, for example, condition the grant of operating authority to a carrier on the carrier's demonstration that its truck engines comply with EPA engine standards. The 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) in the context of the scope of the agency's existing statutory authority. Relatedly, because FMCSA is a safety rather than an environmental regulatory agency, and consistent with the scope of 49 U.S.C. 31315(c), the demonstration project is appropriately focused on evaluating the safety of long-haul Mexican truck operations in the United States. DOT has, however, advised EPA of the demonstration project and notified EPA that the Secretary will contact EPA toward the end of the project to solicit any environment-related views that EPA might have to assist her in her overall evaluation of the project.

Third, the Agency conducted an environmental review of its rules governing the application and safety monitoring procedures for Mexico-domiciled carriers in connection with the issuance of these rules in 2002. That review analyzed the impact of the rules on the full implementation of the cross-border transportation provisions of NAFTA, as authorized by the President upon his modification of the 1982 moratorium and determined that the rules were not major Federal actions significantly affecting the quality of the human environment, a determination that was upheld by the United States Supreme Court in 2004. These are the same rules that control carrier eligibility for participation in the demonstration project, which contemplates only a limited implementation of the NAFTA provisions in terms of the number of carriers and trucks that will be permitted to operate beyond the border commercial zones.

Finally, EPA and at least one of the border states have addressed emissions issues related to Mexican trucks. EPA, in partnership with Mexico and other entities on both sides of the border, is conducting 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 recently 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. Carriers are subject to penalties for the violation of these regulations.

With regard to comments about safety, FMCSA believes that Mexico-domiciled carriers are capable of complying with U.S. laws and regulations. As explained above, there is no evidence that these carriers are unable or unwilling to comply with U.S. requirements simply because they operate under a different regulatory regime in Mexico. Moreover, in concluding that the U.S. breached its obligations under NAFTA, the NAFTA arbitration panel rejected the argument that differences in the two nations' safety regulatory regimes justified prohibiting all Mexico-domiciled carriers from operating beyond the border commercial zones. As noted elsewhere in this notice, the driver and vehicle out-of-service rates for Mexico-domiciled carriers currently operating in the commercial zones is significantly lower than that of U.S.-domiciled carriers. While violations are discovered, inspection data for 2006 demonstrates Mexico-domiciled carriers are more than capable of achieving compliance with U.S. safety requirements.

Finally, FMCSA notes that Mexico does have hours-of-service requirements. Those requirements are discussed in detail later in the notice. With regard to allegations that carriers will falsify applications for operating authority and CMV certifications, the Agency will conduct an on-site PASA for each carrier that participates in the demonstration project. During the PASA, FMCSA auditors can assess the motor carrier's ability to comply with U.S. safety requirements. Looking specifically at CMV certifications (i.e., compliance with the FMVSSs), the Agency issued an enforcement policy memorandum in 2005 to provide guidance to Federal and State motor carrier enforcement personnel on determining whether vehicles meet the FMVSS. A copy of the memorandum is in the docket referenced at the beginning of this notice. Additional information concerning the FMVSS issue is provided below.

Federal Motor Vehicle Safety Standards (FMVSS)

Advocates and ATA argued against the demonstration project requirement that carriers certify that their vehicles have been manufactured in accordance with the National Highway Traffic Safety Administration's (NHTSA) FMVSS. Advocates stated that this requirement is of little value or legal significance for two reasons. First, the motor carrier applying for operating authority may have no knowledge of the safety standards to which the manufacturer originally built or manufactured a particular motor vehicle. Second, motor carriers that do not have the relevant facts and information regarding the manufacture of the motor vehicle have a strong incentive to falsely certify that their vehicles meet U.S. safety standards in order to obtain operating authority in the U.S.

Advocates argued that the FMVSS certification requirement applies to vehicles manufactured abroad that enter the U.S. under NAFTA. Advocates believe FMCSA's demonstration project would, without justification or authority, contradict longstanding Federal law.

ATA noted that a motor carrier's responsibility is to ensure its compliance with the FMCSRs, not with the FMVSS, and it is not the motor carrier's responsibility to certify that a truck meets the FMVSS from a manufacturing standpoint. ATA noted that because motor carriers and inspection officials cannot check in-service vehicles for compliance with many of the FMVSS, mandating certification label retention or re-labeling accomplishes little more than creating a complex paperwork burden. In addition, the commenter noted that FMCSA provides no specific means by which the motor carrier must undertake such certification.

FMCSA Response:

The FMCSA has concluded that it is appropriate to require Mexico-domiciled motor carriers to certify on their applications for operating authority that CMVs used in the U.S. meet the applicable FMVSSs in effect on the date of manufacture.

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 commercial motor vehicles 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. (See FMCSA's August 26, 2005, withdrawal notice, 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. Although FMCSA withdrew its NPRM, the Agency indicated that it would continue to uphold the operational safety of commercial motor vehicles on the nation's highways—including that of Mexico-domiciled CMVs operating beyond the U.S.-Mexico border commercial zones—through continued vigorous enforcement of the FMCSRs, many of which cross-reference specific FMVSSs.

The 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 applicable FMCSRs, including those that cross-reference the FMVSSs. For vehicles lacking a certification label, it has been determined that 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 FMVSS.

Based on information provided by the Truck Manufacturers Association in a September 16, 2002, letter to former NHTSA Administrator Jeffrey W. Runge, M.D., and former FMCSA Administrator Joseph M. Clapp, the FMCSA believes model year 1996 and later CMVs manufactured in Mexico meet the FMVSSs.

In 2005, FMCSA issued a policy memorandum, ''Enforcement of Mexico-Domiciled Motor Carriers'' Self-Certification of Compliance with Motor Vehicle Safety Standards,'' providing guidance to Federal and State enforcement personnel on this issue. The memorandum indicated that if FMCSA finds, during the pre-authority audit or subsequent inspections and compliance reviews, that a Mexico-domiciled carrier has falsely certified on the application for authority that its vehicles are FMVSS compliant, that Agency may use this information to deny, suspend, or revoke the carrier's operating authority or issue appropriate penalties for the falsification. A copy of the Agency's 2005 memorandum is included in the docket referenced at the beginning of this notice.

Although Mexico-domiciled vehicles are 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 stated in the 2005 withdrawal notice, enforcement of the FMCSRs, and by extension the FMVSSs they cross-reference, is the bedrock of these compliance assurance activities. The Agency concluded it is not necessary to amend the FMCSRs to require commercial motor vehicles to display an FMVSS certification label in order to achieve effective compliance with the FMVSSs. Simply requiring CMVs to bear 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.

Federal Motor Carrier Safety Regulations (FMCSRs)

Altshuler believes FMCSA has failed to provide any assessment of whether the program has proposed safety measures that are ''designed to achieve a level of safety that would otherwise be achieved'' through the applicable federal laws and regulations [49 U.S.C. 31315(c)(2)]. Altshuler argued that such information, together with a full analysis of how the proposed program will achieve the necessary levels of safety, is a prerequisite for approval of any pilot program.

Demarche stated that many organizations and businesses believe the standards that Mexican-based carriers must meet are not comparable to U.S. standards, and therefore, many Mexican carriers may have unsafe drivers and equipment. Demarche stated that if HOS compliance, commercial driver's license (CDL) requirements, English language proficiency, and drug and alcohol testing are not reviewed, it will create a trucking environment that does not incorporate U.S. standards, open potential safety risk to American citizens, and place merchandise and goods in jeopardy of being exposed to damage or loss. Demarche requested further research on the process for continuous safety compliance.

Public Citizen mentioned specific safety concerns regarding driver and vehicle violations, drug and alcohol testing, HOS, and hazardous materials.

OOIDA stated that the demonstration project effectively provides exemptions to some U.S. safety requirements for Mexico-domiciled carriers and drivers, based on: (1) Specific statements that have been made by DOT officials and the **Federal Register** notice, and (2) the inherent impracticalities that foreign-domiciled motor carriers and drivers face in attempting to comply with U.S. safety rules. OOIDA noted that U.S.

safety regulations exist for which Mexico has no equivalent law or regulation. In addition, OOIDA asked if any current U.S. exemptions (i.e., oil field operations) could extend to Mexican drivers engaged in similar cross-border endeavors. OOIDA stated that if FMCSA does not publish answers to the specific questions asked in the OOIDA comment letter, then FMCSA should concede that it intends to exempt Mexico-domiciled motor carriers and drivers from certain regulations.

OOIDA also stated that there are U.S. rules for which Mexican motor carriers and drivers will have a de facto exemption. OOIDA argued that ''blanket statements'' that Mexican carriers will be required to comply with all U.S. rules do not adequately respond to these concerns. OOIDA stated that the Agency's response indicates that it has not considered all of the implications of its plan.

Advocates said that one of the most significant safety problems for the proposal is the wide gap in approaches to motor carrier safety between U.S. and Mexican regulations. The commenter noted that the U.S. and Mexico have not reconciled their distinctly different regulatory systems with respect to critical areas of safety performance, including the basis for issuing and revoking commercial driver's licenses, procedures for conducting drug and alcohol testing, and HOS requirements leading to driver fatigue and the safety of passenger bus and hazardous materials transportation. Advocates argued that there are many well-known differences, like those between the Mexican Licencia Federal de Conductor (LFC) and the U.S. CDL, and that the lack of cogent information about underlying Mexican regulations and procedures obscures many other differences.

OOIDA and Advocates stated that, even beyond the imposition of additional requirements, it is evident that important regulatory aspects of the FMCSRs, such as HOS and drug/alcohol testing regulations will be substantively altered to accommodate Mexican motor carriers and operators. As a result, the commenters said these alternative regulatory requirements must be tested and evaluated under a pilot program established pursuant to 49 U.S.C. 31315(c). OOIDA noted that the June 8 **Federal Register** notice announced that the Agency will accept the Mexican LFC, driver medical qualification standards, and drug testing procedures in place of compliance with U.S. rules; this is an admission that Mexican drivers are being exempted from compliance with the U.S. CDL, medical qualification, and drug testing rules.

FMCSA Response:

This demonstration project does not provide Mexico-domiciled motor carriers with exemptions from any of the Agency's regulations (or make them eligible for any existing exemptions), nor will the project test any innovative approaches to regulation. To the contrary, carriers participating in the project will be subject to existing regulations, including the regulations mandating the PASA. Additionally, because no exemptions from or new approaches to the safety regulations are being employed in the demonstration project, the level of safety that will be achieved in the project is the same that would otherwise be achieved if Mexican carriers were granted authority to operate beyond the border commercial zones outside the context of a demonstration project or pilot program.

As to the issue of driver's license equivalency, the Agency has long recognized Mexico's LFC as equivalent to the CDL 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 licenses, a decision that was upheld on judicial review. See International Brotherhood of Teamsters v. Peña, 17 F.3rd 1478 (D.C. Cir. 1994). The Agency has also long recognized Mexico's physical qualification standards and the controlled substances and alcohol collection procedures to be applied if participants in the demonstration project choose to have collections conducted [8] in Mexico. These are not exemptions, but well-established alternative means of meeting U.S. standards that pre-date the demonstration project.

While certain commenters argue that the Agency is unknowingly providing relief, those commenters have not supported their assertions with any specific facts. These arguments appear to be based simply on the recurring but unsupported presumption that given the absence of certain regulatory requirements in Mexico, and certain differences between U.S. and Mexico safety requirements, Mexican carriers are unwilling or unable to achieve full compliance with U.S. safety requirements. As explained above, the Agency finds no substance to that argument. The FMCSA's regulations issued pursuant to section 350 make it clear that Mexico-domiciled motor carriers are subject to very strict safety oversight. The requirements of the implementing regulations are applicable regardless of what actions the government of Mexico takes—all long-haul Mexico-domiciled motor carriers must comply with all applicable U.S. requirements, and FMCSA has no reason to believe that these carriers are any less capable of complying with these requirements than are the commercial zone carriers currently operating in the United States. Any Mexico-domiciled motor carrier that intends to operate in the U.S. must comply with our rules in order to operate in the United States beyond the border commercial zones. If the carrier violates the operating authority rules, its vehicles will be placed out of service when they reach the U.S.

Federal and State officials' experience since 1995 demonstrates Mexico-domiciled carriers are capable of complying with U.S. safety requirements when there is strong enforcement. The fact that Mexico has different safety regulations does not mean carriers based there cannot comply with U.S. requirements. This assumption was proven false years ago with Canada-based motor carriers entering the U.S., and continues to be without merit.

The May 1 and June 8 notices describe in significant detail the on-site PASAs for each eligible carrier and the requirement that only those carriers that successfully complete the PASA will be allowed to operate in the demonstration program. The PASA provides FMCSA the opportunity to have Federal staff review Mexico-domiciled carriers' safety management controls at the carrier's place of business, and to verify the carrier has in place the controls to achieve full compliance with FMCSA's regulations. The public record thus documents the Agency's approach for ensuring that Mexico-domiciled motor carriers comply with all applicable regulations. While commenters may disagree with the approach, none provided any information showing that FMCSA's approach will not be effective, or that there are practical alternatives. Moreover, the regulations creating the PASA were issued in 2002 and have already been subject to public notice and comment and judicial review.

Driver Safety and Compliance Issues

Advocates expressed concern that Mexico-domiciled drivers would be ''ill prepared'' to meet U.S. safety requirements and operate safely on U.S. highways. For example, said Advocates, ''The regulations governing driver maximum hours of service

[8] To date, all Mexico-domiciled carriers that have passed the PASA are sending their drivers to the U.S. for controlled substance testing collections.

requirements, are apparently substantively different in the U.S. and Mexico.'' Advocates argued that in Mexico there is no requirement for a truck driver to keep records of driving time. Advocates do not believe Mexico has ''regulatory regimes'' comparable to the U.S. for alcohol and drug testing and commercial operating licensing. Advocates argue ''FMCSA does not state in the project notice that all participating drivers at the start of the Demonstration Project will have received pre-employment or random controlled substances tests.'' Advocates also believe the demonstration project will not hold drivers to account through random drug and alcohol tests.

Advocates also expressed concerns about entry-level driver training. Advocates noted that FMCSA does not indicate whether participating Mexico-domiciled drivers would be required to take the minimal training requirements for properly observing HOS that the Agency required for entry-level drivers operating in the U.S. Advocates argued that the Agency has failed to require any entry-level driver training compliance as part of the demonstration project.

Public Citizen listed several minimum safety requirements it said Mexico-domiciled carriers would violate. These included drivers operating in violation of out-of-service orders, without a license or with an inappropriate license, or without HOS records of duty status (RODS). Like Advocates, Public Citizen also asserted that Mexico does not require driver drug or alcohol testing, nor, said Public Citizen, does Mexico have a certified laboratory for evaluating samples.

FMCSA Response:

The FMCSA is not aware of any evidence that drivers employed by Mexico-domiciled motor carriers are unable or unwilling to comply with applicable U.S. safety regulations. Again, the border commercial zone experience is instructive: As is the case with truck out-of-service rates, the driver out-of-service rate for commercial zone drivers (1.29% in 2006) is below the rate for U.S. drivers (7.67% in 2006). While it is well understood that Mexico's safety regulations differ from those in the United States, FMCSA's position is clear—Mexico-domiciled drivers must comply with all applicable American safety regulations in the U.S. while participating in the demonstration project. This is the same approach that has been used by the Agency in dealing with drivers employed by Canada-domiciled motor carriers. For example, Mexico does have hours-of-service requirements, including a rule for records of duty status (RODS), and there is a requirement for drug testing. Although the standards in Mexico are different from those in the U.S. those differences do not suggest that Mexico-domiciled carriers are unable or unwilling to comply with U.S. requirements. The FMCSA will not extend any exemptions to Mexico-domiciled drivers involved in the project. The FMCSA has not extended any exemptions to Mexico-domiciled drivers operating in the commercial zones, or to Canada-based drivers operating in the U.S. and there is no reason to do so for drivers participating in the demonstration project.

The FMCSA has provided educational and outreach material to the Mexican government and industry representatives to ensure they have access to the most up-to-date information about the U.S. requirements. A copy of some of this material is included in the docket referenced at the beginning of this notice. However, the responsibility for preparing individual drivers to operate in the U.S. rests with the employer. The FMCSA will assess each participating motor carrier's safety management controls during the PASA to ensure that all participating drivers are prepared to achieve full compliance with U.S. safety requirements. The Agency will continue to monitor the participating carriers' safety performance through roadside inspection results.

With regard to Advocates' comments about entry-level driver training, FMCSA does not interpret 49 CFR 380.501 as applying to Mexico-domiciled drivers. Section 380.501 is applicable to all entry-level drivers who drive in interstate commerce and are subject to the CDL requirements of 49 CFR part 383. Because the Agency has determined that the Mexican commercial license is equivalent to a State-issued CDL, Mexico-domiciled drivers are not required to obtain a CDL issued in the U.S. Consequently, the entry-level driver training rules, like other CDL qualification requirements, do not apply to Mexico-domiciled drivers. (The same is true for Canadian drivers.) Mexico-domiciled drivers are subject to certain other requirements under 49 CFR part 383, specifically driver disqualifications rules, but not the requirement to hold a State-issued CDL.

The FMCSA contacted the Mexican government to gather information about driver training standards in Mexico. The Agency was advised that in order to obtain a Licencia Federal de Conductor (Mexico's CDL), a driver must prove his driving qualifications with a training certificate from an accredited training center or by passing a test administered by the General Directorship of Federal Motor Carrier Transportation (DGAF)—FMCSA's counterpart—of the Secretariat of Communication and Transportation (SCT—U.S. DOT's counterpart). The DGAF established the guidelines for accreditation as an authorized commercial driver training center. DGAF also established commercial driver minimum training requirements that such training centers must comply with. DGAF implemented a Web based information system for the communication with and control of these training centers. The training centers report attendance and testing results via this information system. Interested parties may access the list of SCT accredited training centers at: *http://dgaf.sct.gob.mx/index.php?id=468* by clicking on DIRECTORIO DE CENTROS DE CAPACITACION.

The DGAF–SCT indicated that its intent is that all drivers go through the training to obtain and renew their LFC. To date however, there are not enough training centers available yet to make the training mandatory. Only the Mexico City DGAF field office and the DGAF licensing offices in the states of Nuevo Leon, Tamaulipas and Queretaro make it mandatory to go through the training for the two-year renewals only. The rest of the 46 field offices allow the test only option to the training certificate. The DGAF test is automatically generated from a pool of over 600 questions in a similar manner to the tests used in the U.S. States.

The minimum training requirements establish a minimum curriculum and time both in the classroom and on vehicle/simulator. The amount of hours depends on the class of license (bus, straight truck, vehicle combination, hazmat) and whether it is an issuance or renewal.

Inadequate Databases for Tracking Driver History

Several commenters discussed whether the U.S. and Mexico maintained databases sufficient for the demonstration project. Many commenters believe the Mexican government has no database with information on carrier and driver history. Several commenters said many U.S. States failed to update the Commercial Driver's License Information System (CDLIS). Commenters also doubted the accuracy of the Licencia Federal de Conductor Information System.

Advocates expressed general concerns regarding CDLIS, noting that FMCSA is ''in the midst of an effort to reform and

upgrade CDLIS, so firm reliance on this database at the present time is not possible.'' It said FMCSA did not provide any assurances that CDLIS will be ''complete, timely, and reliable as a source for licensing and violations status of commercial drivers.'' Commenting on FMCSA's use of Mexican data systems, Advocates noted that the Inspector General ''found in 2005 that 67 percent of Mexico-domiciled motor carriers had not submitted updated census forms, 51 percent of the carriers reported having no power units, and 52 percent reported that they had no drivers.''

Advocates indicated that some U.S. States were unable to send Mexican driver convictions to FMCSA's database and that some States underreported driver convictions. Advocates cited the DOT Inspector General's March 8, 2007 testimony that there are continuing inadequacies in driver records databases and that one of three databases with traffic convictions of Mexico-domiciled commercial drivers is incomplete. Advocates reported the Inspector General's finding of a ''precipitous drop in traffic conviction data from Texas'' because that State stopped entering this information in the database, and similar shortcomings for conviction data reporting from New Mexico, Arizona, and California.

Altshuler believes FMCSA failed to meet the requirements in section 350 calling for an accessible database with sufficiently comprehensive data to monitor all Mexico-domiciled commercial driver traffic convictions in the U.S. Public Citizen also wrote that States lack data ''on driver convictions and license suspensions.'' Public Citizen asserted that U.S. States are unprepared to place Mexico-domiciled drivers and vehicles out of service, that those authorities responsible already underreport violations, and that these authorities likely would underreport violations in implementing FMCSA's proposed action.

The Teamsters noted ''the decision that the Transportation Security Administration (TSA) took with regard to the Mexican criminal data base in issuing regulations to administer the Free and Secure Trade (FAST) commercial driver card.'' The Teamsters asserted that the TSA used the U.S. criminal database to perform criminal background checks on Mexican drivers who haul hazardous materials into the U.S. because TSA found the ''Mexican criminal database was incomplete and not easily accessible.''

FMCSA Response:

The FMCSA has satisfied the requirement of section 350(c)(1)(G) concerning an accessible database containing sufficiently comprehensive data to allow safety monitoring of carriers operating beyond the commercial zones and their drivers. Looking specifically at driver monitoring, in 2002 FMCSA established the 52nd State System, which serves as the repository of the U.S. conviction history on Mexican CMV drivers. The system allows FMCSA to disqualify such drivers if they are convicted of disqualifying offenses listed in the FMCSRs.

The system is integrated into the Agency's gateway to CDLIS such that when enforcement personnel perform a Mexican CDLIS-Check, the gateway simultaneously queries both the Mexican Licencia Federal Information System (LIFIS) and the 52nd State System. The response is a single 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 Licencia Federal holders, and other drivers from Mexico, to the 52nd State System via CDLIS. To accomplish this, the States implemented changes to their information systems and tested their ability to make a status/history inquiry and to forward a conviction to the 52nd State System. All States (except Oregon, which does not transmit convictions electronically) and the District of Columbia have successfully tested forwarding convictions electronically on Mexican CMV drivers. Both these jurisdictions can transmit the information manually to FMCSA for uploading into the system.

As of June 13, 2007, 26,457 convictions were transmitted to the 52nd State System by the border States between 2002 and 2007. Of that number, 21,712 were transmitted electronically and 4,745 were manually entered into the system. It should be noted that only 667 of these convictions were for major traffic offenses (listed in 49 CFR 383.51(b)), and 16 were for serious traffic offenses (listed in 49 CFR 383.51(c)).

The conviction data show that the system does work and that States can both transmit the conviction data on Mexico-domiciled drivers and query the system to retrieve conviction data. The FMCSA and its State partners have experience from providing safety oversight for Mexico-domiciled drivers currently operating in commercial zones. It is unreasonable to believe that the small group of drivers who would be involved in the demonstration project will be more difficult to monitor than the much larger population of Mexico-domiciled drivers currently allowed to operate in the U.S. commercial zones.

With regard to the Teamsters' comment about TSA's FAST program, FMCSA emphasizes that motor carriers participating in the demonstration project are not allowed to transport hazardous materials. Therefore, none of the drivers participating in the project are required by TSA to be enrolled in the FAST program for a background records check required by the FAST program. The FAST program background check is similar to that required of commercial motor vehicle drivers licensed in the United States to transport hazardous material in commerce. This requirement is enforced by the Department of Homeland Security, not FMCSA.

In response to Advocates' comment about data from Texas, FMCSA has worked with the State to resolve the issue. Because the 52nd State system generates a monthly tracking report, FMCSA was aware that Texas had stopped entering the driver conviction information in the database. Once FMCSA became aware of the situation, FMCSA worked with the State to ensure the backlog of driver conviction information was uploaded. Presently, the 52nd State system in Texas is current with conviction data and conviction data is now uploaded electronically.

Driver's License Documentation Concerns

Many individuals submitted letters asserting that drivers could obtain fake licenses in Mexico.

FMCSA Response:

The FMCSA does not believe there is a significant risk that Mexico-domiciled drivers could operate in the demonstration project with falsified driver's licenses.

First, during the PASA, FMCSA reviews the Mexico-domiciled carriers' records at their place of business in Mexico. The Agency identifies all drivers the carrier intends to use in the demonstration project so that appropriate reviews of their background and safety performance can be completed prior to making a determination whether the carrier will successfully complete the PASA. Participating carriers may add new drivers after the PASA has been completed; drivers whose files were not reviewed during the PASA will still receive a license check at the border.

Second, the FMCSA will check the status of every driver in the demonstration program at the U.S.-Mexico border, every time the driver enters the United States. This process

will ensure that only those drivers who have been issued a license by the appropriate authorities in Mexico may operate commercial vehicles in the U.S. As discussed earlier in this notice, the FMCSA has established a 52nd State System that enables FMCSA and its State partners to check the Mexican government's database of LFC holders to verify the status of the license.

As is the case for U.S. drivers, while a false license document may be generated, there will no electronic record of that license in the government database making the falsified document easy to discover during an electronic license check. The FMCSA and its State partners must check at least 50 percent of Mexico-domiciled drivers' licenses as they cross the border to comply with the requirements of section 350 of the 2002 DOT Appropriations Act. The Agency has announced its intention to exceed the statutory requirement by checking all drivers participating in the demonstration project.

CDL and LFC Verification Issues

DOT determined in November 1991 that the Mexican Licencia Federal de Conductor is issued in accordance with requirements equivalent to 49 CFR part 383 and that the holder of an LFC would be allowed to operate in the U.S. on the same basis as the holder of a CDL. The U.S. and Mexican governments entered into a Memorandum of Understanding to this effect. OOIDA noted that there have been important substantive changes to U.S. CDL requirements since then. These include the mandatory disqualification for violations of out-of-service orders (59 FR 26022, May 18, 1994), disqualification for violations of railroad highway grade crossing rules (64 FR 48104, Sept. 2, 1999), and disqualification for violations of specific laws in noncommercial vehicles (68 FR 4394, Jan 29, 2003). The commenter said the nearly 16 year-old assessment of their equivalency is not current or reliable.

OOIDA said the June 8 notice states in Table 1 that the Mexican license ''can'' be cancelled under several circumstances. OOIDA noted that U.S. CDL disqualification is mandatory in specific circumstances, and Table 1 implies that the license cancellation rules are discretionary in Mexico. OOIDA concluded that this table does not demonstrate how Mexican license rules for cancellation provide for at least the same level of safety as the U.S. CDL disqualification rules.

OOIDA added that the notice states that FMCSA will verify each driver's qualifications, including confirming the validity of each driver's LFC. OOIDA had serious concerns about the limits of the databases available to check the qualification of Mexico-domiciled drivers. The commenter said the Mexican Licencia Federal Information System (LIFIS) does not contain all traffic conviction data occurring in Mexico, and conversations with representatives from the Los Angeles District Attorney's Office indicate the lack of any accessible Mexican database regarding criminal history information. OOIDA has learned that moving violations recorded in LIFIS are violations or incidents that occur only on Mexican federal highways, not local highways or roads. If true, the commenter said this system fails to record accurately an undetermined amount of violations and incidents committed by drivers that could disqualify them from operating within the U.S. without a detailed and systematic safety analysis. The commenter argued that without the ability to verify accurately traffic conviction and criminal history records of Mexican commercial license holders, U.S. officials do not have the same ability to enforce Mexican driver compliance with U.S. CDL rules and a violation of the 1991 CDL MOU arguably exists.

Furthermore, OOIDA stated that the lack of a database containing the background of Mexican drivers that is as complete or reliable as the databases available about U.S. drivers creates a double standard. The commenter explained that U.S. drivers are held to a higher standard because of the availability of databases, such as CDLIS, NLETS, and NDR, which contain more comprehensive and accurate histories of individuals than any information available about Mexican drivers. The commenter noted that Congress has authorized funds to address the problem of drivers effectively ''masking'' their traffic conviction history by obtaining CDLs in different states, but OOIDA has no information as to whether Mexico has made similar efforts. The commenter said this issue is crucial because the FMCSRs contain provisions that disqualify a driver based upon certain traffic violations, including those which occur in a driver's personal vehicle.

Similarly, the Teamsters noted that under the Motor Carrier Safety Improvement Act of 1999, U.S. drivers are subject to CDL disqualification for serious driving violations occurring in their personal vehicle. The commenter argued that, in fairness, these same regulations should apply to Mexican drivers operating in the U.S.

Advocates said the declared equivalence of the LFC and the U.S. CDL is an alternative regulation to the U.S. CDL requirements because anecdotal information indicates that all LFC holders are automatically qualified to transport hazardous materials, and some types of the LFC allow mixed transportation of both freight and passengers, among other differences. The Agency is imposing ''a system for monitoring the performance of Mexican drivers while in the U.S. and taking steps to disqualify these drivers if they incur violations that would result in a U.S. driver's license being suspended.'' The commenter stated that this includes violations in a non-CMV that results in suspension or revocation of a non-CMV license of a U.S. commercial driver, a violation that may not exist in Mexico.

ODOT stated that it has recently encountered drivers that hold both a Mexico-issued LFC and a U.S.-issued CDL. ODOT indicated it is unclear what enforcement action, if any, is appropriate and the Commercial Vehicle Safety Alliance (CVSA) Out-of-Service Criteria are silent on this matter. ODOT believes the States need an answer to two questions: (1) what is the appropriate action when a driver is found to possess both a Mexican and U.S. driver license; and (2) what is the appropriate action when a driver is found with two licenses and one is suspended?

FMCSA Response:

The determination of LFC/CDL equivalency pre-dates the demonstration project by more than 15 years, is memorialized in a binding agreement between the United States and Mexico, and has helped ensure the safe operation of Mexican trucks in the border commercial zone by Mexican drivers. The demonstration project is not the appropriate context for any reconsideration of that determination.

U.S. CDL regulations have been amended since 1991, as OOIDA noted, mainly by the adoption of new disqualification provisions. However, none of those changes affects the validity of the decision by the U.S. and Mexico to recognize each other's commercial licenses. Both parties understood that their respective regulatory systems differed in certain respects. The agreement simply recognized that the knowledge, skills, and other prerequisites for obtaining a commercial license were equivalent in the U.S. and Mexico, and that each nation should therefore accept the other's license as valid for operating a CMV. Neither party agreed in 1991 that it would adopt the same enforcement or disqualification standards, or assess the

same penalties. The differences between the standards and penalties enforced in the U.S. and Mexico are simply irrelevant to the continued validity of the 1991 agreement.

The Teamsters, OOIDA and others have misunderstood FMCSA's statement that Mexico-domiciled drivers and carriers will be subject to the same standards as U.S. drivers and carriers. This does not mean, as their comments suggest, that U.S. standards must be applied to Mexican drivers and carriers operating in Mexico. The Teamsters, for example, seem to believe that FMCSA should disqualify Mexican drivers from operating in the U.S. for violations committed in their personal vehicles (non-CMVs) in Mexico if the Agency would disqualify a U.S. driver who committed the same violation in a non-CMV in this country. In an argument summarized earlier in this notice, Altshuler claimed that failure to disqualify a Mexican driver under these circumstances would constitute an exemption under 49 U.S.C. 31315(b) which would require further notice and comment on that point before the demonstration project could proceed. It would also contradict FMCSA's assurances that Mexican carriers and drivers will be held to the same standards as their U.S. counterparts.

The FMCSA cannot grant an exemption under section 31315(b) unless it first has jurisdiction over the driver, carrier or vehicle. The Agency has no authority to apply U.S. standards to driver or carrier actions 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 a non-CMV in Mexico, Licencia Federal Information System (LIFIS) will reflect that fact and FMCSA will refuse to let the driver operate in this country. As a condition of participating in the demonstration project, Mexican carriers must use qualified drivers. The FMCSA, however, cannot disqualify an LFC-holder for acts occurring in Mexico because those actions do not violate 49 CFR part 383, which does not apply in Mexico. Despite Altshuler's argument, FMCSA has not granted an exemption pursuant to section 31315(b) or (c) when it fails to apply to Mexican drivers operating in Mexico the same standards it applies to U.S. drivers operating in the U.S. The Agency does not have universal jurisdiction. But FMCSA will not grant exemptions from its regulations where it has jurisdiction to enforce those regulations, *i.e.*, on U.S. territory.

As for OOIDA's comment regarding alleged deficiencies in Mexico's criminal history database, it is not apparent why that is relevant to the demonstration project. U.S. drivers applying for a hazardous materials endorsement to a CDL are required by Transportation Security Administration (TSA) regulations to undergo a security threat assessment which includes a criminal history records check (49 CFR part 1572). TSA has accepted as equivalent to a threat assessment under part 1572 the background check performed by the Bureau of Customs and Border Protection (CBP), Department of Homeland Security (DHS), on Mexican and Canadian hazmat drivers seeking a Free and Secure Trade (FAST) card in order to obtain expedited processing at U.S. borders (71 FR 44874, August 7, 2006). However, vehicles transporting hazmat are not allowed to participate in the demonstration project. Neither FMCSA nor TSA require criminal background checks of CDL drivers who do not seek a hazardous materials endorsement.

All drivers operating CMVs in the U.S. 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 U.S. Any convictions for disqualifying offenses that occur in the U.S. will result in the driver being disqualified from operating a CMV for the period of time prescribed in the Federal Motor Carrier Safety Regulations.

With regard to ODOT's comments, if a State licensing agency determines that an individual holds an LFC, the State should decline the driver's application for a CDL. If a State enforcement official discovers an individual with an LFC and a State-issued CDL, the official should cite the individual for violation of the State's regulation corresponding to 49 CFR 383.21, concerning the Federal prohibition against CMV operators having more than one driver's license. The State enforcement agency should also immediately notify FMCSA and the State licensing agency that issued the CDL so that appropriate actions can be taken to prevent the individual from continuing to operate with two commercial licenses. The FMCSA will report these activities to the Mexican government so that appropriate actions can be taken in Mexico.

Electronic Data Collection and Analyses

Advocates, the Teamsters, Parfrey Trucking Brokerage, and OOIDA argued that Mexico has incomplete driver history databases to monitor the Mexican carriers.

The Teamsters argued that Mexican criminal databases are incomplete and not easily accessible, and could be the reason that FMCSA did not include hazardous material drivers in the demonstration project. OOIDA believes the Mexican LIFIS does not contain all traffic conviction data occurring in Mexico. OOIDA also questioned how broad, up-to-date, and trustworthy the Mexican database will prove. They also argued that without a full enforcement history or driver criminal history for Mexican carriers, FMCSA could not verify that Mexican drivers are eligible under U.S. CDL or hours-of-service rules. OOIDA and Parfrey Trucking asked about Federal and State law enforcement's access to the Mexican driver database.

Some of the commenters believe the U.S. database for the demonstration project has flawed data collection measures. Advocates and Public Citizen commented that some U.S. States, particularly border States, do not or cannot report all Mexican carrier violations and convictions to the Federal database.

FMCSA Response:

As discussed earlier in this notice, the FMCSA has established a 52nd State System which enables States to capture conviction data on Mexico-domiciled drivers and to access information about the status of LFC holders. The conviction data presented previously provides evidence that convictions have been uploaded from the States, with Texas recording 25,755 convictions since the system was established in 2002. Therefore, the Agency believes that the 52nd State System provides an effective means for monitoring the safety performance of Mexico-domiciled motor carriers while they are operating under the jurisdiction of FMCSA and the States. The Agency has disqualified Mexico-domiciled drivers based on convictions for disqualifying offenses listed in 49 CFR 383.51 that occurred in the U.S.

As mentioned above, U.S. regulations do not require such criminal background checks as a prerequisite for obtaining a CDL, unless the driver applies for a hazardous materials endorsement. Because none of the carriers participating in the demonstration project are allowed to transport hazardous materials, their drivers are not required to obtain a hazardous materials endorsement. The condition of Mexican criminal databases is irrelevant to the demonstration project. What matters is that FMCSA has established from queries of the LIFIS database, that the Government of

Mexico maintains accurate information regarding the status of drivers' licenses.

Hours of Service (HOS)

Several Commenters expressed concern that the less stringent duty-time standards in Mexico will result in fatigued drivers entering the U.S. Commenters also asserted that Mexican drivers will be inexperienced in keeping hours-of-service logbooks in compliance with FMCSA's HOS regulations.

Advocates and OOIDA stated that Mexico has no specific or comparable HOS requirements for commercial drivers and that compliance and enforcement are questionable. Advocates argued that if FMCSA requires a participating truck driver to maintain 7 previous days of records of duty status (RODS) and make it available for inspection while on duty, as required in Part 395, then the Agency has an obligation to be able to corroborate the accuracy of entries made in the logbook. However, if there are no comparable commercial driver RODS required and enforced in Mexico and the veracity of a Mexican truck driver's RODS for the prior 7 days cannot be validated by U.S. enforcement officials, Advocates argue that accepting Mexican driver RODS for operations in Mexico is a regulatory alternative to U.S. HOS requirements.

Furthermore, Advocates said FMCSA does not explain how Mexican drivers who are not subject to the requirements for RODS or logbooks in their home country can expect to keep appropriate records in compliance with the FMCSA's HOS requirements. Advocates concluded that Mexico-domiciled drivers would not be able to meet the U.S. HOS recordkeeping requirements that include verification of hours of work, hours of driving, and hours of off-duty time.

The Teamsters stated that there has not been any real enforcement of any HOS regulations in Mexico, beyond the recent requirement of drivers having to carry logbooks. The Teamsters indicated that FMCSA and DOT can demand paper records, but without enforcement, those records are suspect.

Public Citizen stated that commercial vehicles entering the U.S. from Mexico should have electronic on-board recorders installed to ensure that drivers entering the U.S. have some record of HOS, by which compliance with U.S. HOS regulations can be determined.

FMCSA Response:

The FMCSA requires that all motor carriers operating commercial motor vehicles within the United States comply with the applicable HOS requirements. The Agency acknowledges that Mexican HOS requirements are different. However, it does not follow as a matter of law or logic that Mexico-domiciled carriers have thus been effectively exempted from the applicable Federal requirements, or have been given an alternative to those requirements, when those carriers are operating in the U.S.

In March 2000, the Mexican government amended its regulations to require the use of records of duty status (RODS) or logbooks by all drivers working for motor carriers authorized to operate on Federal roads in Mexico. Prior to the 2000 amendment, RODS were only required of drivers transporting hazardous materials.

The minimum information that must be recorded in the RODS is as follows:

1. The motor carrier's name and address;
2. Motor carrier service classification;
3. Vehicle make/year/license plate tag;
4. RODS completion date;
5. Driver name;
6. Driver license number and expiration date;
7. Origin/destination/route;
8. Hours for departure/arrival/driving/on-duty without driving;
9. Exception cases when driver may exceed hour-of-service limits; and,
10. Driver and carrier representative signatures.

Under Mexican labor law, drivers daily hours of service are limited to 8 hours for the day shift (6 a.m.–8 p.m.), 7 hours for the night shift (8 p.m.–6 a.m.) and 7.5 hours for a mixed shift. During a continuous work day, workers must rest for at least one half hour and if the worker cannot leave the workplace for rest or meal breaks, the corresponding time must be counted as part of the hours of service. Drivers may accumulate daily overtime of up to three hours, but only three times a week (maximum 9 hours per week total). Drivers must be paid double their hourly rate for overtime.

DGAF and General Directorship of Protection and Preventive Medicine in Transportation (DGPMPT) inspectors, with the assistance of the Federal Preventive Police (PFP), enforce Mexico's driver hours-of-service logbook regulations. Drivers are required to carry the hours of service logbooks for the last seven days. DGPMPT physicians inspect drivers for fatigue symptoms at terminals and the roadside. At the carrier site, DGAF inspectors audit carrier drivers' logbooks for the last 60 days during a carrier compliance review.

Based on the information above, FMCSA believes it is reasonable to conclude that Mexico-domiciled drivers are capable of complying with U.S. hours-of-service requirements, including the requirement to maintain a RODS.

Mexico-domiciled drivers operating in the U.S. must be able to produce upon the demand of a Federal or State enforcement official, an up-to-date record of duty status (RODS) or ''log book'' that accounts for the duty status for the current day, and the previous 7 days, unless the driver is covered by the 100 air-mile radius exception under 49 CFR 395.1(e)(1), an exception that applies to drivers of all carriers, foreign and domestic. The RODS must cover the required time periods even if the driver was operating in Mexico during those periods. Federal and State enforcement personnel inspect the RODS during roadside inspections, including inspections at ports of entry, and during on-site reviews at motor carriers' facilities. The FMCSA will have information from the on-site PASAs to determine whether the 100 air-mile radius exception applies to the participating carriers' employees expected to drive in the demonstration project. If the exception applies, the Agency can assess whether the carrier has the necessary documentation to verify work schedules of the drivers. If the exception does not apply, the Agency expects that the carrier will maintain RODS and supporting documents, to ensure compliance with the HOS rules while operating in the U.S. Supporting documents, such as fuel receipts, toll receipts, shipping papers, etc., with information concerning the date, time and locations at which certain activities have taken place can be compared with the RODS to verify the accuracy of the entries in the logbook.

The FMCSA emphasizes that the Agency and its State partners have extensive experience enforcing the HOS rules for U.S. carriers and Mexico-domiciled carriers currently authorized to operate in the commercial zones. Appropriate enforcement actions will be taken against participating drivers if they are found to be in violation of the HOS rules during roadside inspections.

In light of the applicability and enforcement of the existing HOS rules as explained above, FMCSA finds no justification for singling out Mexican carriers by requiring them to install electronic on-board recorders to help verify driver hours, something that is not required of U.S. and Canadian carriers.

While the May 1 notice did not specifically discuss training of Mexico-domiciled carrier officials and drivers to

ensure they understand the applicable Federal safety requirements, the FMCSA worked with the Mexican motor carrier industry to provide training concerning U.S. requirements following the publication of the Agency's March 2002 rulemakings mentioned previously in this notice.

Controlled Substances and Alcohol Testing

Many commenters asserted that Mexico does not require drug or alcohol testing for drivers. Several commenters said drug and alcohol testing labs in Mexico are inaccurate. Others said there are no certified laboratories in Mexico for drug and alcohol testing. Commenters also wrote that border checks would be less effective than random drug tests.

Advocates wrote that there are numerous references in the FMCSRs to workplace ''controlled substances [drug and alcohol] testing, including training for specimen collectors, oversight of the collection site and its equipment, and maintenance of the chain of custody ensuring that specimens are valid and accurately indexed to each worker.'' Advocates argued that FMCSA failed to specify in the May 1 notice whether participating drivers would have received pre-employment or random controlled substances tests. Public Citizen wrote that Mexico has no laboratories certified to perform drug and alcohol testing, and that the situation would hinder FMCSA's ability to conduct random drug and alcohol use reviews.

Advocates also questioned whether drug tests at the border would be effective. The commenter asserted, ''[I]f the alternative procedure of sample collection at the border is permitted, Mexican drivers will know in advance that a drug/alcohol test may be required on entry into the U.S.'' Advocates said the driver may predict and control testing, a circumstance at odds with the goal of surprise, random workplace testing.

FMCSA Response:

There is no basis for the commenters implicit assumptions that Mexico-domiciled long-haul carriers are any less capable of complying with the applicable Federal requirements than their border commercial zone counterparts are.

The FMCSA's rules required controlled substances and alcohol testing for foreign-based carriers beginning on July 1, 1997. If an employer began its highway transportation operations in the U.S. after July 1, 1997, it must begin its testing program on the day the employer begins operations in the U.S. Therefore, the Agency has extensive experience enforcing the controlled substances and alcohol testing rules on Mexico-domiciled motor carriers operating in the commercial zones as well as Canadian carriers that are also not required to have pre-employment or random drug tests under Canadian regulations.

Mexico-domiciled carriers must have a testing program that provides pre-employment controlled substances testing for all drivers who will be assigned to operate CMVs in the U.S. Mexican drivers participating in the demonstration project are subject to pre-employment controlled substances testing if they have not previously operated in the U.S. (i.e., as drivers operating in the border zones), and are not currently covered by a controlled substances testing program that meets U.S. requirements.

The program must also provide random controlled substances and alcohol testing, post-accident controlled substances and alcohol testing for certain crashes that occur in Mexico during trips to the U.S., while operating in the U.S., and in Mexico during trips from the U.S.[9] Drivers who test positive must follow the instructions provided by substance abuse professionals that meet U.S. requirements, undergo return-to-duty testing, and the required follow-up testing regime.

Because there presently are no U.S.-certified collection facilities and laboratories in Mexico, Mexico-domiciled long-haul carriers must comply by using collection facilities and certified laboratories in the United States, just as their border commercial zone counterparts have done for a decade. For example, drivers selected for random controlled substances tests would be notified after they enter the U.S. to report to a designated collection site in the commercial zones where there are assurances that the requirements of 49 CFR Part 40 would be fulfilled. The specimens would then be forwarded to a certified laboratory in the United States, and the results processed in accordance with Federal requirements. Drivers who refuse to report to the collection facility in a timely manner would 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 the requirements under 49 CFR Part 382.

Currently, Mexico-domiciled drivers operating within the commercial zones may use this approach to fulfill the random testing requirements of 49 CFR 382.305. The selection of drivers must be made by a scientifically valid method, each driver selected for testing must have an equal chance (compared to the carrier's other drivers operating in the U.S.) 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 proceeds to the test site immediately. Based on FMCSA's experience enforcing the controlled substances and alcohol testing requirements on commercial zone carriers, the Agency believes long-haul Mexico-domiciled carriers can and will comply with the random testing requirements, especially given that many of the participants in the demonstration project already have authority to conduct commercial zone operations.

Given the procedures explained above, it is clear that Mexico-domiciled carriers are not being granted an exemption from the controlled substances and alcohol testing requirements. Through the PASA process described in the June 8 Federal Register notice, the Agency can determine with certainty whether the motor carrier has in place a program to achieve full compliance with the controlled substances and alcohol testing requirements under 49 CFR Parts 40 and 382. And the ability of the commercial zone carriers to follow these procedures demonstrates that Mexican carriers are capable of satisfying the Agency's drug and alcohol testing requirements. At the time this notice was prepared, all Mexico-domiciled carriers that have passed the PASA process have chosen to use controlled substances and alcohol facilities in the U.S. and not Mexican collection sites.

D. Section 6901(b)(2)(B)(iii)—English Language Proficiency and Cabotage Enforcement

English Language Proficiency

Several commenters wrote about potential problems related to participating drivers' inability to understand English. Commenters asserted that the demonstration project does not require English proficiency and expressed concern that drivers might

[9] On April 4, 1997 (62 FR 16369), the Federal Highway Administration published ''Regulatory Guidance for the Federal Motor Carrier Safety Regulations.'' The guidance explains the post-accident alcohol and drug testing requirements for foreign drivers involved in crashes occurring outside the United States.

fail to understand crucial traffic signals and signs.

OOIDA and Advocates stated that the notice falls short of providing the specific measures required by Congress regarding English language requirements. Advocates said the notice declares that Mexico-domiciled participants will be required to have ''the ability to communicate in English.'' Advocates said the Agency failed to demonstrate that it will ensure, at the border, that every driver participating in the project will be required to demonstrate English proficiency with regard to the four separate requirements specified in the regulation.[10] Instead, Advocates argue FMCSA indicated that verification of English proficiency will occur only if some unspecified dissatisfaction occurs on the part of a U.S. Federal or State inspection official ''when [they] interact with the driver in English,'' and if ''there appears to be a communication problem, the driver will be directed to a site where a full driver inspection will be conducted.'' Advocates said this unspecified ''interaction'' with the driver does not fulfill the requirement in Section 6901 for verifying, in each instance, that a project driver meets each of the four requirements of the English proficiency regulation.

FMCSA Response:

As stated in the June 8 notice, FMCSA and its State partners will check Mexico-domiciled drivers and vehicles entering the U.S. as part of the demonstration project. During that check, which will include verification of a current CVSA decal on the vehicle and the driver's Mexican CDL, inspectors will conduct a driver interview in English. The interview will include, at a minimum, inquiries about: The origin and destination of the trip; the amount of time spent on duty, including driving time, and the record of duty status (or log book); the driver's license; and vehicle components and systems subject to the FMCSRs. If the inspector determines the driver is unable to understand and respond to official inquiries and directions in English, the driver will be cited for a violation of 49 CFR 391.11(b)(2) and placed out-of-service in accordance with the out-of-service criteria.

English proficiency will also be evaluated by means of an interview during any other vehicle inspections occurring in the U.S. and will likewise result in an out-of-service order if the driver can not meet the requirements of section 391.11(b)(2). Although a violation of 49 CFR 391.11(b)(2) has been included in the North American Uniform Out-of-Service Criteria published by the Commercial Vehicle Safety Alliance (CVSA) since April 1, 2005, FMCSA personnel are not bound by the OOS criteria. In fact, the Agency did not immediately change its previous practice, which was simply to cite drivers and/or motor carriers when violations were discovered.

While FMCSA has codified its own authority to issue OOS orders for relatively common violations, such as those involving drivers' hours of service (49 CFR 395.13) and mechanical defects (49 CFR 396.9(c)), both the Motor Carrier Act of 1935 (49 U.S.C. 31502(b)) and the Motor Carrier Safety Act of 1984 (49 U.S.C. 31136) implicitly authorize the Agency to place drivers and vehicles OOS for all violations of regulations based on those statutes. Any other conclusion would prevent FMCSA from halting unsafe practices the statutes were enacted to address.

The driver interview complies with the rule. If the driver successfully completes the interview, it is likely that the driver can communicate at some level with the general public, understand traffic signs in English, and make entries on reports and records required by the FMCSA.

Cabotage Requirements

The ATA discussed the difficulty that experienced motor carriers and law enforcement officials have in understanding existing cabotage rules for Mexican carriers. The Teamsters and Public Citizen also expressed concerns about enforcing the existing cabotage laws. The Teamsters stated, ''[T]here will be a strong temptation by unscrupulous employers to capitalize on lower wage Mexican drivers and entice them into carrying domestic cargo in the United States. We know that this occurs, as Mexican trucks have been caught over the years operating illegally in more than 25 states.'' OOIDA asked whether cabotage violations were grounds for disqualification from the demonstration project.

There were also comments about training and the training materials used by law enforcement to implement the cabotage laws. ATA said, ''The notice states that FMCSA has worked with the International Association of Chiefs of Police (IACP) to provide training to state and local law enforcement agencies. ATA supports the development of such training materials, and request that FMCSA share its training materials in the docket for review by stakeholders to ensure our mutual understanding as to what is being presented and asked of local and state law enforcement personnel for such enforcement activities.'' OOIDA asked for more information on who would receive the training and the content of that training.

OOIDA posed questions about potential loopholes in cabotage rules. They inquired about regulations concerning Mexico-domiciled carriers hauling loads from Mexico to Canada, hauling ''in-bond'' between U.S. maritime ports and U.S. Free Trade Zones, and hauling international cargo from inside the U.S. to a U.S. maritime port. According to Advocates, ''the FMCSA has no reliable figures or information regarding the relationship of operating authority violations to cabotage violations.'' Advocates stated that ''not only are a tiny percentage of operating authority violations detected but, that the agency has no idea how many of these involved a violation of cabotage.''

FMCSA Response:

The issues the commenters raise are not new with regard to Mexico-domiciled carriers. The FMCSA emphasizes that Mexico-domiciled motor carriers are already allowed to operate in U.S. commercial zones along the U.S.-Mexico border. And 49 CFR 365.501(b) requires that ''a Mexico-domiciled carrier may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo.''

Furthermore, as indicated in the Agency's June 8 notice concerning the demonstration project, the provisional operating authority granted to a Mexico-domiciled motor carrier to operate beyond the commercial zone is limited to the transportation of international freight. Therefore, a carrier providing point-to-point transportation services in the U.S. is operating beyond the scope of its operating authority and is in violation of 49 CFR 392.9a(a). Commercial vehicles found to be operating beyond the scope of the carrier's provisional operating authority will be placed out of service, and the motor carrier may be subject to penalties.

The FMCSA has trained all State truck inspectors regarding enforcement of operating authority and conducted significant outreach to the law enforcement community to ensure they are aware of these provisions and that they will examine MX trucks to determine if they are violating these regulations. Additionally, we have provided and will continue to provide

[10] 49 CFR 391.11(b)(2) requires that drivers read and speak the English language sufficiently to: (1) Converse with the general public; (2) understand highway traffic signs and signals in the English language; (3) respond to official inquiries; and, (4) make entries on reports and records.

training to State and local law enforcement agencies on conducting roadside vehicle/driver traffic stops and detecting cabotage violations during stops of commercial motor vehicles for traffic violations. This training, aimed at law enforcement agents who are not full-time truck inspectors, but may encounter a Mexican truck during a traffic stop, is being conducted in cooperation with the IACP, as mentioned previously in this notice. The training material FMCSA developed with the IACP includes a module on operating authority; part of this module includes guidance concerning cabotage.

As FMCSA explained in its June 8 notice, previous efforts in training on the enforcement of operating authority rules have been successful. In 2006, the Southern border States (California, Arizona, New Mexico, and Texas) discovered 2,328 instances (from 951,229 inspections) where a carrier was found to be operating outside the scope of its operating authority. While these carriers may have been operating outside the scope of their authority for reasons other than cabotage (i.e., operating beyond the commercial zones or having not received commercial zone authority), this data shows State and Federal enforcement personnel are successfully enforcing this regulation.

The Agency and its State enforcement partners will also use records such as logbooks and associated supporting documents such as bills of lading during compliance reviews to determine if a Mexican carrier has been operating beyond the scope of its authority by engaging in cabotage.

With regard to OOIDA's questions, the FMCSA considers all point-to-point deliveries of freight within the U.S., regardless of the origin of the freight, to be prohibited. Once the freight has been delivered to an international port in the U.S., any subsequent movement of the load from the port to another destination in the U.S. is considered a point-to-point movement within the U.S. Therefore, participating carriers are prohibited from engaging in such transportation activities. If a participating carrier engages in such activities during the demonstration project, FMCSA will remove the carrier from the project.

E. Section 6901(b)(2)(B)(iv)—Evaluation Standards

Evaluating Carrier and Driver Safety Performance

The ATA, Altshuler, and Advocates argued that the evaluation process for the demonstration project must include safety performance standards. Advocates asked FMCSA to provide information on the safety evaluation criteria.

FMCSA Response:

The FMCSA's June 8 notice provided appropriate safety performance standards for the participating carriers. These carriers must comply with all U.S. safety requirements and will not be granted an exemption for the purpose of participating in the project.

The evaluation process will provide an assessment of whether the safety performance of Mexico-domiciled carriers operating beyond the border commercial zones in the U.S. differs from the performance exhibited by U.S.-domiciled carriers. Specifically, the evaluation will focus on answering the following five key safety questions:

- Are the available crash data for Mexico-domiciled carriers participating in the project statistically different from comparable U.S.-domiciled carriers?
- Do Mexico-licensed commercial drivers pose a greater risk to the traveling public than U.S. CDL holders in terms of demonstrated unsafe driving practices, such as speeding, improper lane changes, controlled substances use/alcohol misuse?
- Are the trucks operated by Mexico-domiciled motor carriers maintained at levels similar to those of U.S.-domiciled carriers, or do they have higher out-of-service rates?
- In the course of conducting PASAs, did FMCSA detect violations of critical safety regulations in any greater proportion than found in new entrant audits of U.S.-domiciled carriers?
- What other safety problems are being experienced by enforcement personnel and others in the course of implementing the demonstration project?

The FMCSA's June 8 notice explained how the Agency will assess crash rates, driver behavior, the number of driver out-of-service orders, the number of PASA violations, and post-authority safety violations. The Agency believes the level of detail provided in the June 8 notice fulfills the requirements of 49 U.S.C. 31315.

Data Collection and Evaluation

Advocates expressed concern about the project's data collection methodology and the quality of the data sample. Advocates also remarked that the notice does not describe specific data collection measures. The organization expressed concern that data analysis would be inadequate without a control group and application of other peer-approved scientific principles.

Furthermore, Advocates argued ''This is not only an unfair basis for comparison, but FMCSA is ignoring scientific, peer accepted principles on how a comparison or control group is carefully selected to compare with a study group.'' Altshuler agreed, saying, ''* * * the notice fails to offer any criteria pursuant to which the program's success may be assessed. Although certain statistics apparently will be tracked, there is no framework or method for evaluating those statistics.''

FMCSA Response:

The FMCSA disagrees with Advocates' assertions. The Agency has structured the demonstration project in a manner that will enable an appropriate collection and analysis of data. As discussed in the June 8 notice, the Secretary has appointed a panel of three independent transportation evaluators to assess the safety performance of Mexico-domiciled carriers operating beyond the border commercial zone in the United States. The evaluators are Mortimer L. Downey III, former Deputy Secretary of Transportation, Kenneth M. Mead, former DOT Inspector General, and James T. Kolbe, former U.S. Congressman from Arizona. The Office of the Secretary has asked DOT's Research and Innovative Technology Administration's Transportation Safety Institute (TSI) to manage the project independently of FMCSA for independent evaluation purposes. TSI has retained a project manager and technical staff to work with the evaluators. The evaluation will provide an assessment of whether the safety performance of Mexico-domiciled carriers operating beyond the border commercial zone in the U.S. differs from the performance exhibited by U.S.-domiciled carriers. The data will be collected in the United States by FMCSA and the States through their routine monitoring of the Mexico-domiciled carriers and will be forwarded to the Evaluation Panel for any subsequent analysis.

Report to Congress on the Independent Evaluation

Several commenters expressed concern that the project did not contain credible independent evaluation. Advocates commented that the demonstration project failed to provide a method for reporting its findings to Congress. They expressed concern that only U.S. DOT and FMCSA will review the project without reporting its results. The ATA suggested that FMCSA form an independent evaluation panel to review and assess the impact of the demonstration project.

FMCSA Response:

The FMCSA's June 8 notice identified the independent evaluation team, and no commenter has provided any evidence that would question the team's credibility. The work of the team and its project management staff will be completely independent of DOT.

The FMCSA's June 8 notice also explains the requirements of section 6901, which includes the requirement for the OIG to transmit to Congress and the Secretary of Transportation a report verifying compliance with each of the requirements of subsection (a) Of section 350 of the 2002 DOT Appropriations Act. Section 6901 also requires that the OIG submit to Congress and the Secretary an interim report 6 months after the commencement of the project, and a final report within 60 days after the conclusion of the project. In addition, because section 6901 requires that FMCSA satisfy the requirements of 49 U.S.C. 31315(c) in conducting the demonstration project, the Agency is required to, and will, submit a report detailing the results of the project to Congress upon the project's completion.

Also, the Secretary of Transportation has committed to having a bi-partisan independent review panel assert its involvement from the onset to the conclusion of the demonstration project. There will be more than adequate opportunity for an independent evaluation of the project.

F. Section 6901(b)(2)(B)(v)—Equivalent U.S. and Mexican Standards

Physical Qualification Standards

The Teamsters, Public Citizen, OOIDA, and Advocates expressed concern over driver compliance with medical qualifications. The Teamsters said that in FMCSA's recent Notice of Proposed Rulemaking for combining the medical qualifications with the CDL process, FMCSA indicated that there is no agreement between the U.S. and Mexico concerning the medical qualifications for drivers. The commenter said little is known about the physical and medical criteria used to qualify truck drivers in Mexico, and FMCSA must know how the Mexican system of evaluating drivers compares to the U.S. system. Public Citizen said that FMCSA has acknowledged in pending rulemaking that commercial drivers will select health care providers who will find them physically fit to operate commercial motor vehicles. The commenter expressed concern about the quality of the medical examinations and physical fitness requirements for CDLs in Mexico.

Similarly, Advocates stated that because FMCSA did not provide specific information about the Mexican physical qualification standards, the public cannot determine whether, in fact, they are equivalent to U.S. physical qualification standards.

FMCSA Response:

The FMCSA determined in 1991 that the physical qualifications standards in Mexico are comparable to, but not identical to U.S. requirements. This notice and comment process is not addressing whether the Agency's previous determination was appropriate.

In Mexico, in order to obtain the Licencia Federal de Conductor 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 state a Mexican driver must pass the medical exam performed by Mexico's Secretariat of Communications and Transportation (SCT), Directorship General of Protection and Prevention Medicine in Transportation (DGPMPT). The medical exams are conducted by government doctors instead of the private physicians performing the exam on U.S. drivers.

The Agency emphasizes that drivers for Mexico-domiciled motor carriers have been operating within 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. Accordingly, FMCSA sees no reason to revise its previous judgment that the medical standards are comparable.

IV. Other Issues Raised by Commenters

Impact on Truck Drivers, Small Fleets, and Businesses

Numerous commenters expressed concern that the demonstration project would adversely affect U.S. carriers by giving a competitive advantage to Mexican carriers. Several commenters noted that Mexican carriers would benefit from lower wages for drivers. Commenters also discussed taxes and fees that carriers must pay.

Demarche wrote:

''Smaller, minority-owned carriers have the ability to service shippers domestically, and desire to have the same opportunities available to them as other carriers. The demonstration project tilts the competitive advantage to Mexican carriers and creates increased competition for smaller carriers in the U.S., causing a potential strain on the trucking industry.''

Demarche discussed driver shortages in the industry, and projected that a decrease in the industry's white male population ''provides an opportunity for traditionally disadvantaged groups to gain sustainable employment in the industry and fulfill the lofty employment requirements of many carriers.'' Demarche noted that the industry generates business growth in certain demographic groups and concluded that the proposed demonstration project would allow Mexican carriers to ship freight to U.S. destinations at lower labor costs than U.S.-based carriers can. Demarche believes ''Lower labor costs [in Mexico] will lead to lower rates [than U.S. carriers] carriers can provide, ultimately enticing shippers to use Mexican domiciled carriers to haul freight.'' Demarche also expressed concern that shippers have no incentive to ensure driver compliance with applicable laws and ''may not have an overwhelming concern on who is hauling goods, just as long as freight is received by the customer at the right price and place.'' Demarche argued that this scenario increased competition among smaller and minority-owned carriers, caused these carriers to lower costs and further decrease profit margins, and essentially shut out minority-owned carriers from this segment of the industry.

OOIDA believes the demonstration project would be disadvantageous to U.S. motor carriers because ''Complying with our tax regulations will place them in an uneven economic competitive environment compared to foreign rivals.'' OOIDA indicated that Mexican carriers are likely to cross the border with fuel tanks filled to capacity to avoid paying Federal or State fuel taxes. OOIDA continued, ''With industry fuel mileage averages, Mexican trucks could be expected to operate between 1,500 and 1,800 miles without purchasing U.S. taxed fuel.''

OOIDA commented on the impacts of insurance on small business owners, in relation to cross-border trucking. OOIDA wrote ''All commercially available U.S. insurance policies that cover the vehicle itself specifically exclude travel into Mexico[,]'' and that only large self-insured carriers likely will have access to Mexico. The organization concluded that the demonstration project effectively would exclude small business truckers from the Mexican market. OOIDA knew of no available insurance coverage for a small business motor carrier operating in Mexico with mortgaged equipment.

FMCSA Response:

The FMCSA does not believe the demonstration project 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 Mexican carriers operate in the United States based on the possible economic impact of those carriers on U.S. carriers. FMCSA's responsibility, pursuant to the President's November 2002 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 carriers for point-to-point deliveries of domestic freight cabotage within the United States. Section 365.501(b) provides that ''a Mexico-domiciled carrier may not provide point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo.''

The provisional operating authority granted to a Mexican domiciled motor carrier to operate beyond the commercial zone is limited to the transportation of international freight. Therefore, a carrier providing point-to-point transportation services in the U.S. is operating beyond the scope of its operating authority and is in violation of 49 CFR 392.9a(a). Commercial vehicles found to be operating beyond the scope of the carrier's provisional operating authority will be placed out of service, and the motor carrier may be subject to penalties.

Concerns About Furthering Illegal Activity

Many commenters argued that the demonstration project generally will further illegal activity within the U.S. Commenters specified drug trafficking, illegal immigration, smuggling, illegal cargo, and tax evasion. Commenters also believed that drivers would violate laws unrelated to motor carriage.

FMCSA Response:

The FMCSA disagrees with the commenters on this issue. The FMCSA is not aware of any information that would suggest the demonstration project will increase the extent to which illegal activities occur. Mexico-domiciled motor carriers are already allowed to operate in commercial zones. Many of the carriers that have applied for authority to operate beyond the commercial zones and participate in the demonstration project are already conducting CMV operations in the U.S., albeit limited to the commercial zones. Therefore, FMCSA does not anticipate problems with this population of carriers

As indicated in the May 1 notice, participating carriers were selected from several hundred Mexico-domiciled carriers that filed a complete OP–1 (MX) application. The carriers that are 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. Therefore, FMCSA does not believe the participating carriers represent a significant risk of illegal drug activities.

The participating carriers, like the carriers currently operating into the border commercial zones, will be subject to the full array of customs and immigration inspections when they enter the United States. Persons entering the U.S. for business purposes and traveling beyond the commercial zones must obtain a visa.

It is inappropriate to conclude that Mexico-domiciled carriers are likely to engage in illegal activities simply because they are from Mexico. In any case, FMCSA does not have the statutory authority to deny long-haul Mexico-domiciled carriers operating authority based solely on commenters' perceptions that they are more likely than U.S. carriers to engage in illegal activities.

Hazardous Materials and Passenger Carriers

Altshuler, ODOT, and Advocates noted that the **Federal Register** notice does not explicitly state that motor carriers transporting hazardous materials (HM) or passengers are not eligible to participate in the demonstration project. These commenters requested a definitive statement on this issue from FMCSA.

The Teamsters noted that one of the most frequent out-of-service (OOS) violations for Mexican drivers hauling HM into the commercial zones is displaying incorrect placards or no placards at all. The Teamsters questioned how FMCSA would assure the stop of HM inside commercial zones without proper placards.

FMCSA Response:

The FMCSA emphasizes that the May 1 and June 8 notices did include statements indicating Mexico-domiciled motor carriers transporting passengers or hazardous materials will not be permitted to participate in the demonstration project. For example, the portion of the May 1 notice that discusses the selection criteria for participating carriers indicates that carriers known to transport passengers of hazardous materials would be eliminated from consideration. The FMCSA takes this opportunity to reiterate that Mexico-domiciled carriers transporting passengers or hazardous materials will not be allowed to participate in the demonstration project. The Agency will ensure that this aspect of the project is continually emphasized in materials provided to potential program participants before the PASA is conducted, in conversations with carrier officials during the PASA, and in the operating authority document.

Minimum Levels of Financial Responsibility

The Truck Safety Coalition (the Coalition) stated that although FMCSA asserts that Mexican-domiciled motor carriers will be required to carry insurance through a U.S. insurer, the current level of insurance is only $750,000, an amount that is too low to protect American citizens. The Coalition suggested that there should be a substantial increase in the minimum amount of insurance coverage required for foreign carriers operating inside the U.S., at least to an amount that might be more commensurate with the losses suffered in the event of a crash involving personal injury and death.

FMCSA Response:

There is no merit to the Coalition's suggestion that Mexico-domiciled motor carriers transporting general freight should be required to have a greater level of financial responsibility than U.S.-based motor carriers transporting the same types of cargo. Mexico-domiciled 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 carrier, insured by a U.S.-based company, should be required to have a greater level of insurance coverage than a U.S.-based carrier.

Vehicle Inspection and Fleet Safety

Altshuler expressed concern that the May 1 **Federal Register** notice provided no specific details on the PASA, *e.g.*, the scope of that inspection, whether the inspection is physical or merely an audit of the carrier's vehicle's paperwork, and whether the results of those inspections will be made public. Altshuler stated that the notice also fails to identify the frequency with which the PASA and the inspections will be performed and it is unclear if the safety audit will be repeated every 3 months, or if some other, type of inspection will occur every 3 months.

Advocates said the statement ''Every truck that crosses the border as part of the pilot will be checked—every truck, every time'' gives the impression that each participating vehicle will be inspected upon each entry into the U.S. However, the commenter noted that the notice states that ''[e]ach 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,'' which appears to mean that demonstration project vehicles will not be fully inspected on each entry.

FMCSA Response:

The June 8 notice provides details about the PASA. During the on-site PASA, FMCSA will select vehicles for inspection from among those that are intended for use in the United States. The Agency will also review fleet maintenance records to assess the carrier's inspection, repair and maintenance practices. A complete copy of the Agency's PASA training material is in the docket listed at the beginning of this notice.

In response to Altshuler's question, each participating carrier will be required to successfully complete subjected to only one PASA.

In response to questions about roadside inspections, FMCSA and its State partners will check participating carrier's CMVs every time they cross the border to ensure the vehicles display current CVSA decals. However, the Agency and the States do not intend to conduct a full safety inspection of vehicles operated by participating carriers when such vehicles display a current CVSA decal unless the vehicle has an obvious safety deficiency, in which case an inspection will be conducted regardless of whether there is a current CVSA decal.

The FMCSA notes there is no statutory or regulatory requirement to check every Mexico-domiciled truck, every time. The statement Advocates referenced was part of a media advisory and was meant to emphasize Mexico-domiciled trucks coming into the U.S. would be held to the same safety standards as U.S. trucks. Every truck, every time is expected to be in compliance with U.S. safety requirements.

Suspension and Revocation of Participating Carriers

The Teamsters said it was unclear as to the criteria to use for disqualifying carriers. Both the Teamsters and OOIDA recommended that violating cabotage laws should disqualify a carrier from participating in the demonstration project. The Teamsters recommended that FMCSA should terminate any Mexican carriers caught hauling hazardous materials loads from the demonstration project.

FMCSA Response:

Any Mexico-domiciled carrier operating as part of this demonstration program will immediately be subject to suspension and revocation of its registration if it receives an ''Unsatisfactory'' safety rating. Any Mexico-domiciled carrier that receives a ''Conditional'' safety rating as a result of a compliance review will have its authority revoked unless it can demonstrate corrective action within 30 days—this is a more stringent standard for U.S.-based carriers that receive a conditional rating; they are allowed to continue operating. Also, any carrier in the demonstration project will have its authority suspended if it fails to maintain insurance on file with FMCSA. Any vehicles found operating in the United States by a carrier without active operating authority will be placed out of service.

In addition to loss of authority for less than satisfactory safety ratings or absence of insurance, drivers and carriers participating in the demonstration project, like all commercial motor vehicle drivers and motor carriers operating in the U.S., are subject to civil penalties for violations of the Federal Motor Carrier Safety Regulations.

Participating carriers will be removed from the program if FMCSA determines the carrier violates U.S. cabotage rules or transports hazardous materials or passengers beyond the commercial zones.

FMCSA Authority To Proceed With the Project

Altshuler set out its interpretation of the process requirements under section 350(c). It said that provision requires DOT's Inspector General ''to conduct a 'comprehensive review of borders operations' to verify the existence of 8 conditions (and to) perform such a review '180 days after the first review is completed, and at least annually thereafter'.'' The commenter said the Secretary of Transportation then must certify in writing and addressing any Inspector General finding relating to the eight conditions, ''* * * that the opening of the border does not pose an unacceptable safety risk to the American public.'' Other commenters expressed the same or similar views.

OOIDA believes ''Section 6901 does not permit FMCSA to proceed with a pilot program until the [Inspector General] publishes a new report and that report verifies FMCSR compliance with Section 350.'' The Teamsters argued that the Inspector General's not having made the required verifications ''begs the question as to whether the DOT has acted prematurely and without proper statutory authority to conduct this pilot program.''

Advocates said, ''At the threshold, the Project violates section 31315 because providing notice and comment did not occur prior to implementation of the Project[.]'' Advocates asserted that the Agency already had taken ''major actions'' to allow Mexico-domiciled carriers to operate in the U.S. beyond the border zones, that the May 1 Notice conceded the Agency already had begun the project, and that the Office of the Secretary had characterized the demonstration project as a ''fait accompli'' in February 2007. Advocates pointed out that the Secretary said, on February 23, 2007, that FMCSA would complete initial safety audits for project participants in 60 days so that the selected carriers could begin traveling beyond the border areas. The comment observed, ''That 60-day calendar for implementing the Demonstration Project would conclude prior to the date of the instant notice asking for public comment on the content of the Project.''

FMCSA Response:

There is no basis for the claim by Altshuler and others that the Secretary of Transportation must repeat the certification required by section

350(c)(2) of the 2002 DOT Appropriations Act after each OIG review required by section 350(c)(1) and (d). In 2002 the OIG verified FMCSA's compliance with section 350(c)(1)(A)–(H), and the Secretary certified ''that the opening of the border does not pose an unacceptable safety risk to the American public,'' as required by section 350(c)(2). Section 350(d) requires the OIG to conduct its second review and subsequent annual reviews ''using the criteria in (c)(1)(A) through (c)(1)(H) consistent with paragraph (c) of this section. * * *'' Section 350(d) is directed exclusively to the OIG; it does not refer to section 350(c)(2), nor does it mention a Secretarial certification. There is nothing to suggest that OIG reviews subsequent to the initial finding of compliance with section 350(c)(1) require a corresponding certification by the Secretary.

The demonstration project will commence upon the grant of provisional operating authority to long-haul Mexico-domiciled carriers. However, FMCSA will not begin granting such authority until after the report required by section 6901(b)(1) has been completed and the Agency completes any follow-up actions needed to address any issues that may be raised in the report.

With regard to Advocates' comment, FMCSA emphasizes the project is not a ''pilot program'' within the meaning of 49 U.S.C. 31315(c) because the Agency is not testing innovative approaches to motor carrier safety and is not granting any exemptions from the safety regulations. The requirements of 49 U.S.C. 31315(c) were not applicable to the demonstration project until the enactment of the 2007 Act. In accordance with the 2007 Act, FMCSA published a notice in the **Federal Register** on June 8, 2007, announcing additional details about the project and requesting public comment.

The demonstration project satisfies the requirement that the level of safety provided be equivalent to or greater than the level of safety provided through existing safety regulations. The participating carriers will not be provided exemptions from any of the existing safety regulations.

The Advocates claim that the Agency had already initiated the program prior to the publication of either the May 1 or June 8 notice are incorrect. In fact, no Mexico-domiciled motor carrier has been granted authority to operate beyond the commercial zones. The Agency has completed significant amounts of preparatory work in anticipation of launching the project, such as reviewing applications for operating authority and conducting PASAs. However, FMCSA has not granted authority to Mexico-domiciled carriers to operate beyond the commercial zones.

''Demonstration Project'' or ''Pilot Program''

Responding to the May 1 Notice, Advocates argued that FMCSA was undertaking a statutory ''pilot program'' under 49 U.S.C. 31315(c) that required following a number of procedural steps and meeting various statutory preconditions. Advocates argue that the demonstration project ''is testing an 'innovative approach to motor carrier, commercial motor vehicle, and driver safety,'' and ''is intended to evaluate alternatives to regulations.''

FMCSA Response:

The demonstration project is not a ''pilot program'' within the meaning of 49 U.S.C. 31315 because the Agency is not testing an innovative approach to motor carrier safety and is not granting any exemptions from its safety regulations. During the demonstration project, all participating carriers will be required to comply with existing U.S. safety regulations; no alternatives to existing regulations are being implemented, and no exemptions are being provided. However, because section 6901 of the 2007 Act requires that FMCSA ensure that the demonstration project satisfies the pilot program prerequisites of 49 U.S.C. 31315, Advocates' concerns have been effectively resolved by the 2007 statute.

Collection of Taxes

OOIDA noted that FMCSA was without authority or responsibility for collecting various State and Federal taxes, and therefore the Agency could offer no assurances ''Mexican motor carrier will pay all applicable U.S. 'vehicle registration and taxation, and fuel taxes.'' OOIDA emphasized the Agency could not audit Mexican carriers for their required compliance with the International Fuel Tax Agreement, or provide assistance to the States to help ensure the Mexico-domiciled carriers comply with the International Registration Plan, nor ensure Mexican carriers pay other State taxes and fees imposed on the U.S. motor carrier industry.

FMCSA Response:

The collection of State taxes and registration fees are State responsibilities over which the Agency has no control. However, FMCSA has worked with State tax and vehicle registration officials to ensure that Mexico-domiciled long-haul motor carriers will pay applicable fuel taxes and registration fees for operating commercial vehicles in the U.S. and that those taxes and fees will be subject to apportionment among the U.S. states and Canadian provinces as required by law.

Specifically, in 2001 the National Governors Association Center for Best Practices, in cooperation with the International Fuel Tax Association, Inc. (IFTA, Inc.), the group responsible for managing the International Fuel Tax Agreement (IFTA), and the International Registration Plan, Inc. (IRP, Inc.), which manages the International Registration Plan (IRP), convened a Fuel Tax and Registration Working Group comprised of State officials to recommend strategies for collecting appropriate taxes and fees from Mexico-domiciled carriers as they begin operations under NAFTA. Subsequently, a NAFTA Border States Working Group was formed consisting of representatives from each of the border States, and representatives from IFTA, IRP, the U.S. Department of Transportation, Transport Canada, Mexico SCT, and ATA to further develop these strategies. The Working Group's recommendations have been adopted by the States and Provinces that are parties to IRP and IFTA. As a result of these efforts, Mexican long-haul carriers participating in the demonstration project will be subject to the same state fuel tax and registration fees and apportionment system that applies to U.S. and Canadian carriers and will be subject to State fuel tax and registration fee audits.

The FMCSA worked with the NAFTA Border States Working Group to develop an IRP/IFTA awareness course. The course was presented to Mexico-domiciled motor carriers and Mexican government officials at six locations in Mexico and the United States. The training provided an overview of IRP/IFTA and the principles of reciprocity between member jurisdictions. The course presented the basic IRP/IFTA forms and a demonstration of record keeping requirements. It also provides points-of-contact for the four Southern Border States. Trainings sessions were held in: Monterrey, Mexico; Mexico City, Mexico; Otay Mesa, California; Laredo, Texas; El Paso, Texas; and, Nogales, Arizona.

IV. FMCSA Intent To Proceed With the Demonstration Project

In consideration of the above, FMCSA believes it is appropriate to commence the demonstration project after the U.S. Department of Transportation's Inspector General completes his report to Congress, as required by section 6901(b)(1) of the Act, and the Agency completes any follow-up actions needed

to address any issues that may be raised in the report.

Issued on: August 10, 2007.

David H. Hugel,

Deputy Administrator.

[FR Doc. E7–16207 Filed 8–16–07; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2007–28934]

Public Comment on Educational Messages To Improve Use of Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for comments.

SUMMARY: NHTSA is working with representatives of the child restraint and automobile manufacturers and child passenger safety advocacy groups to identify common awareness messages that could be used by manufacturers, advocates and others to inform parents or caregivers about the importance of correct use of the Lower Anchors and Tethers for Children (LATCH) system. This notice presents proposed messages and solicits public comment on their suitability.

DATES: Written comments may be submitted to the agency and must be received no later than August 30, 2007.

FOR FURTHER INFORMATION CONTACT: Jeffrey Michael, Ed.D., Director of the Office of Impaired Driving and Occupant Protection, 202–366–4299 (*jeff.michael@dot.gov*), NHTSA, NTI–110, 1200 New Jersey Avenue, SE., Washington, DC 20590.

ADDRESSES: Written comments must refer to the docket number of this Notice and be submitted 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. DOT, 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590.
- Hand Delivery: Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

You may call Docket Management at 202–366–9324 and visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

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 discussion under the heading ''How do I prepare and submit comments?'' at the end of this notice. Please see also the discussion there of confidential business information.

SUPPLEMENTARY INFORMATION:

I. Background

The LATCH system was introduced in 1999 as a means to standardize installation of child restraint devices in motor vehicles without the use of vehicle seat belt systems. In March 1999, NHTSA issued a final rule establishing Federal Motor Vehicle Safety Standard (FMVSS) No. 225, ''Child Restraint Anchorage Systems,'' requiring motor vehicle manufacturers to install a specified LATCH attachment system for child restraints (64 CFR 10786; March 5, 1999) in nearly all new passenger vehicles. In September 1999, the Agency amended FMVSS 213, Child Restraint Systems, in a complementary manner, requiring the provision of LATCH attachment points including upper tether attachments. A phase-in period was specified for both the vehicle and child restraint requirements with full implementation in specified applications by 2002.

To assess progress with implementation and consumer use, NHTSA conducted a detailed survey of LATCH system use from April to October 2005. Findings from the survey were published in December 2006 (''Child Restraint Use Survey—LATCH Use and Misuse,'' available at *http://dms.dot.gov* under Document number NHTSA–2006–26735–2; also available online at *http://www.nhtsa.gov*). The survey examined whether drivers of LATCH-equipped vehicles used available LATCH attachments to secure their child restraints to the vehicle, and if so, whether they properly installed the restraints. The survey recorded the make/model and the type of restraint installed in each seating position, and details on both the vehicle and child restraint equipment available in that seating position. In addition, information was gathered about the drivers' knowledge of the LATCH system, opinions on its ease of use, and reasons for its use or nonuse.

Findings from the survey indicate that while the users of the LATCH system correctly install the child restraint system more frequently than those observed in previous surveys using non-LATCH restraints and vehicles, a number of misuse problems still exist.

On February 8, 2007, NHTSA convened a public meeting to discuss findings from the NHTSA survey along with information on use of LATCH systems available from auto and child restraint manufacturers, child passenger safety advocacy organizations and others. A transcript of this meeting is available under Document number NHTSA–2007–26833–23 or by visiting NHTSA Docket Management in person at Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC from 10 a.m. to 5 p.m., Monday through Friday, or by Internet through the Docket Management System Web page of the Department of Transportation (*http://dms.dot.gov*).

As a result of this meeting, NHTSA is working with representatives of the child restraint and automobile manufacturers and child passenger safety advocacy groups to identify common awareness messages that could be used by manufacturers, advocates and others to inform parents or caregivers about the importance of correct use of the Lower Anchors and Tethers for Children (LATCH) system.

Between March and July 2007 this working group of representatives met by conference call and in person to discuss awareness goals and to identify several message variations that were subsequently tested for effectiveness in focus groups of parents and caregivers. The messages were selected with the assumption that they would supplement rather than supplant existing and additional LATCH educational and instructional communications from individual manufacturers, government agencies and advocacy organizations. An advertising agency was enlisted by NHTSA to assist with development of appropriate messages.

The message and graphic listed below were those identified by the working group that proved most effective in focus group testing. NHTSA is seeking public comment on the suitability of the message and graphic for use as a supplement to other LATCH education and instruction efforts in a variety of settings to include news periodicals (print and electronic), Web sites, posters, brochures, vehicle owner's manuals, child restraint manufacturers' instructions, child restraint packaging, in-store displays, and advertising (print and broadcast).