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Regulatory Analysis and
Regulatory Flexibility Analysis

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Part 365, Part 368, and Part 385 Rules
Mexican Carrier Provisions

*Federal Motor Carrier Safety Administration
December 2001*

Introduction

Under the provisions of the North American Free Trade Agreement (NAFTA), signed in December 1992, Mexican motor carriers were to be gradually allowed to increase their operating range in the United States. The United States government, concerned about the safety of Mexican trucks and buses, delayed implementing the provisions of NAFTA that would have increased the allowable driving range for these vehicles. At the same time, the Department of Transportation began working on programs and procedures to allow the DOT to ensure the safety of Mexican commercial motor vehicles (CMVs) when they were eventually allowed further into the United States. In February 2001, a tribunal established under the dispute resolution procedures outlined in NAFTA found that the U.S. action violated the terms of NAFTA.

The Department of Transportation issued three Notices of Proposed Rulemakings (NPRMs) related to NAFTA and procedures for CMVs owned and operated by motor carriers domiciled in Mexico on May 3, 2001. After reviewing the comments, the FMCSA has revised the proposals and is issuing the attached rules. One interim final rule (IFR), Application by Certain Mexico-Domiciled Motor Carriers to Operate Beyond United States and Municipalities and Commercial Zones to the United States-Mexico Border (the Part 365 IFR) proposes revising the OP-1(MX) form to include information from the current OP-1(MX) and the OP-1(P) (which would be discontinued for Mexican carriers). This rule describes the requirements for Mexico-domiciled motor carriers to obtain provisional operating authority for transportation beyond the border commercial zones. It requires that carriers pass a Pre-Authorization Safety Audit (PASA) before receiving OP-1(MX) authority. In addition, Mexican motor carriers applying for OP-1(MX) authority will have to complete the BOC-3 form, and verify that they have the necessary level and type of insurance. Applicants will also have to submit an MCS-150 form. The second IFR, Revision of Regulations and Application Form for Mexico-Domiciled Motor Carriers to Operate in United States Municipalities and Commercial Zones on the United States Mexico Border (the Part 368 rule) revises Form OP-2, which is currently used by Mexico-domiciled motor carriers to obtain authority to operate within the U.S. municipalities and commercial zones adjacent to Mexico in the four border States. The third rule, an IFR titled Safety Monitoring System and Compliance Initiative for Mexico- Domiciled Motor Carriers Operating in the United States (the Part 385 IFR) outlines a system to monitor the safety of Mexico-domiciled motor carriers. It establishes an 18-month period during which carriers would have provisional certificates of authority or certificates of registration, and explains how these certificates become permanent.

This regulatory evaluation analyzes all three of these rules. To the extent possible, the costs and benefits of the different rules are disentangled, and results are summarized for each rule. This document does not evaluate free trade with Mexico, NAFTA, or the impact of opening the border to additional Mexican trucks and buses. There are a number of analyses of various aspects of U.S.-Mexican trade, but these are beyond the scope of this evaluation. This evaluation focuses on the Federal Motor Carrier Safety Administration's (FMCSA) estimates of the costs and benefits of these rules.

Accordingly, issues such as the environmental or balance of payments impacts of open borders are not discussed in this analysis.

A Programmatic Environmental Assessment (PEA) of these rules has also been prepared, and has been entered into the docket. The FMCSA has also prepared a regulatory evaluation of another rule published concurrently in the Federal Register. This rule requires that all commercial motor vehicles operating in the United States have a label certifying compliance with the Federal Motor Vehicle Safety Standards (FMVSS). That regulatory evaluation has been placed in the docket.

Background

The Bus Regulatory Reform Act of 1982 limits most Mexican CMVs operating in the United States to commercial zones in the States of California, Arizona, New Mexico, and Texas. These commercial zones are generally areas from three to 20 miles north of U.S. border cities. No physical boundaries separate the commercial zones from the remainder of these States.

Mexico-domiciled carriers wishing to operate within the U.S. municipalities and commercial zones along the U.S.-Mexican border must obtain a certificate of registration from the FMCSA, which they receive by filing a form OP-2. Mexican carriers operating in the border commercial zones are subject to U.S. safety and insurance regulations.

NAFTA, which was signed in 1992 and approved by Congress in 1993, provided for the gradual relaxation of restrictions between the three signatory countries, the United States, Canada, and Mexico. Immediately upon taking effect, NAFTA allowed Mexican bus companies to apply for authority to conduct cross border charter and tour bus operations to all points in the United States. Property carriers were to be allowed to apply for authority to deliver goods from Mexico to the four border States (and to take backhauls to Mexico) beginning on December 17, 1995. On January 1, 1997, Mexican bus companies were to be allowed to apply for authority to engage in regular route passenger operations between Mexico and all points in the United States. On January 1, 2000, Mexican property carriers were to be allowed to apply for authority to deliver goods from Mexico to all points in the United States (but not point to point carriage of domestic goods in the United States). Finally, on January 1, 2001, Mexican bus companies were to be allowed to file applications to provide point to point bus service in the United States.

Immediately upon NAFTA's taking effect, the former Interstate Commerce Commission (ICC) began processing applications from Mexican bus companies to conduct charter and tour bus operations in the United States. Applicants submitted the form OP-1(P). On December 18, 1995, the DOT announced that it would delay implementing the additional access provisions, because of concern about the safety of Mexican motor carriers. Because of the delay in implementing these provisions, no Mexican motor carriers currently have OP-1(MX) authority. (A small number of Mexican carriers have OP-1 authority, which was granted before the moratorium was imposed). A number of carriers submitted these forms to the DOT, but many of these carriers withdrew their submissions

when it became clear that the DOT would not issue authority to operate beyond the border zone. Some of these carriers subsequently applied for commercial zone (OP-2) authority, and others withdrew their applications entirely. Approximately 190 Mexican motor carriers currently have OP-1(MX) forms pending with the DOT.

Mexican carriers that operate within the U.S. municipalities and commercial zones along the U.S.-Mexico border must file form OP-2. The current version of the OP-2 form asks detailed questions about the carrier's operations, location, and equipment, and the FMCSA estimates that it takes approximately two hours for a carrier to complete (OMB Approval No. 2126-0019). Approximately 10,100 active Mexican carriers currently have OP-2 authority. Approximately 12 Mexican charter and tour bus companies have OP-1(P) authority. This does not mean that all these carriers are currently operating in the United States, just that they are legally able to do so.

The ICC also developed an OP-1(MX) form, for Mexican carriers to apply for authority to operate beyond the four border States. This form is similar to the OP-1 form long used by the former ICC for domestic for-hire carriers. While a number of Mexican carriers submitted these forms, they were not processed by the DOT, pending the outcome of the delay in implementing NAFTA. The OP-1(MX) is similar to the OP-2 form, and also takes two hours to complete (OMB Approval No. 2126-0016).

Even without the broader border opening envisioned by NAFTA, trade between the United States and Mexico has skyrocketed the last few years. Along with the growth in trade has come an increase in truck traffic crossing the border. According to the Federal Reserve Board of Dallas, trade with Mexico reached \$196.6 billion in 1999, up more than 141 percent from 1993 (Vargas). The growth in trade appears to have accelerated in 2000, according to data from the Bureau of Economic Analysis reported by Economic Data Resources. Northbound truck crossings have grown almost 90 percent from fiscal year (FY) 1993 to FY 2000, rising from 2.4 million to 4.55 million crossings per year (Economic Data Resources, 2000).

The growth in trade and traffic has been accompanied by increasing concern about the safety of Mexican motor carriers operating in the United States. Several government reports indicate that many Mexican motor carriers are unlawfully operating outside the commercial zone, and that they have a higher out-of-service (OOS) rate than domestic carriers. The DOT's Office of the Inspector General (IG) issued a report in November 1999 detailing safety and operational problems with Mexican motor carriers and the Department's oversight of these carriers. The IG found that 41 percent of 23,300 Mexican vehicles inspected at the border or in the commercial zones in FY 1998 were placed OOS. The IG also estimated that approximately 130 Mexican motor carriers may be operating illegally outside the border States, and another 505 in the border States but outside the commercial zones (Office of the Inspector General). The General Accounting Office (GAO) noted in 1997 that Mexican trucks inspected at the border had an average monthly OOS rate of 45 percent between January and December of 1996, compared to a 28 percent rate for domestic carriers during fiscal year 1995 (General Accounting Office).

A review of more recent DOT data indicates that Mexican motor carriers continue to have a higher OOS rate than their domestic counterparts. Some explanation is needed before presenting these data. These data are based on carriers the FMCSA believes to be Mexico-domiciled. Some carriers have filed the requisite forms (OP-1(MX) or OP-2) for operating authority or certificates of registration, while others have US DOT numbers but no operating authority. The DOT IG report noted this discrepancy in its report. The data in this chapter represent the DOT's best guess of the number of Mexico-domiciled carriers who may have operated in the United States over the last few years. Because this chapter deals with the historical crash and inspection record of Mexican motor carriers, it is important to count all these carriers, whether or not they are still operating in the United States. Later chapters, which discuss the anticipated consequences of the proposals, will include other figures to better reflect the number of Mexican carriers the agency believes are currently operating in the United States.

The FMCSA's Office of Data Analysis and Information Systems developed a file of Mexican carriers that have recently operated in the United States. It includes Mexican carriers with operating authority, carriers who have a DOT number but no authority, carriers with both a DOT number and operating authority, and other carriers with neither operating authority nor a DOT number which the agency has reason to believe are operating in the United States. These latter carriers are those who have been subject to a roadside inspection in the United States at some point in the last three years. As of January 2001, this file contained 11,787 Mexican motor carriers. By way of comparison, there are almost 600,000 carriers registered on the FMCSA's Motor Carrier Management Information System (MCMIS).

Table 1 shows that both the number of truck crossings and the number of inspections have increased over the last several years. While the number of inspections has increased at a faster rate than crossings, inspections equals only a small percentage of the total Mexican trucks crossing the border. In 1997, about three quarters of one percent of Mexican trucks were inspected, while 1 percent were inspected in 1998. Assuming that truck crossings continued to grow at the historical rate of 10 percent, the 47,000 inspections conducted in 2000 would translate into 1.2 percent of trucks crossing.

While this figure is quite low, it is important to note that many trucks cross the border multiple times, so that four million annual crossings translates into fewer than 4 million trucks. Many drayage trucks simply haul trailers from one side of the border to a transshipment point on the other side. These vehicles may cross the border several times a day. The 1 percent of vehicle crossings inspected translates into a much higher percentage of border trucks inspected. A preliminary FMCSA analysis, based on estimates from three different data sources and methodologies, estimates that approximately 80,000 trucks operate in the border region, 63,000 Mexico-domiciled and 17,000 domiciled in the United States (Economic Data Resources, 2000). The MCMIS inspection file shows that almost 34,000 distinct Mexican trucks were inspected in calendar year 2000, 54 percent of the 63,000 that operate in the border area. (Table 1 shows the number of inspections, rather than the number of *vehicles* inspected).

Table 1
Inspections and Crossings

	1997	1998	1999	2000	Total	Average
MX Trucks Insp, Border		26,787	42,182	47,347	116,316	38,772
MX Carriers Insp, Border		3,597	4,382	4,302	12,281	4,094
Trucks Insp per Carrier		7	10	11	10	9
Border Crossings, millions	3.481	3.900	4.267		11.648	3.883

Table 2 shows that Mexican carriers have a higher out of service rate than their U.S. counterparts. Inspections of Mexico-domiciled carriers were largely in the commercial zone, while inspections for U.S.-domiciled carriers took place nationwide. Between 1998 and 2000, Mexican trucks had an average OOS rate of 42.3 percent, 13.2 percent higher than the rate for U.S. trucks. However, inspection data suggests that Mexican carriers are improving, as both the driver and vehicle OOS rates have fallen steadily over the three years. The driver OOS rate fell by 30 percent, and the vehicle rate was down by 12 percent. For U.S. carriers, there was no real change in the driver rate and a 6.5 percent fall in the vehicle rate. Because of the more rapid improvement in Mexican OOS rates, the gap between the total OOS rates has fallen from 16.3 percent in 1998 to 11.4 percent in 2000. These numbers are different than those reported by the GAO and the Inspector General because of the different time periods covered, and to the FMCSA's possibly more expansive definition of Mexican carriers. This table includes data on the 11,787 Mexico-domiciled motor carriers that FMCSA believes may have been operating in the United States over the last several years; the GAO and Inspector General reports *appear* to use a more limited definition including only carriers with a certificate of registration, although we were not able to verify that this is in fact the case.

Table 2
OOS Rates,
1998-2000

	1998	1999	2000	Average
Mexican Driver OOS	9.2%	7.6%	6.4%	7.5%
Mexican Vehicle OOS	41.6%	38.8%	36.4%	38.5%
Mexican Total OOS	46.2%	42.7%	39.8%	42.3%
US Driver OOS	7.1%	7.3%	7.2%	7.2%
US Vehicle OOS	25.1%	24.0%	23.5%	24.2%
US Total OOS	29.9%	29.0%	28.4%	29.1%

The vast majority of these inspections take place in the four border States. Some Mexican carriers are allowed to operate outside the border areas, as explained above, and

we were not able to readily differentiate those operating outside their authorized area. Therefore, we did not attempt to estimate the number of Mexican carriers operating beyond their authorized areas.

Texas alone accounted for over 60 percent of the inspections in 2000, up from 48 percent in 1998. Texas also consistently places the highest percentage of vehicles and drivers out of service.

While the Mexican OOS rate is relatively high, these vehicles do not appear to be involved in a large number of crashes. According to the MCMIS crash file, between 1997 and 1999 an average of 113 crashes per year occurred in which Mexican CMVs were involved. This included 2 fatal crashes, 65 injury crashes, and 46 tow-away crashes. Over 80 percent of these crashes took place in Texas. A review of crash records from the Texas Department of Public Safety (DPS) suggests that many crashes are not reported to MCMIS. Texas DPS data indicate that almost twice as many crashes are on their records as on MCMIS. Accordingly, we multiplied the 113 crashes from MCMIS by 1.83 to account for underreporting. Table 3 reports our estimate of the average number of crashes with Mexican trucks and buses. Totals may not add because of rounding.

Table 3
Adjusted Number of Crashes with Mexican Vehicle Involvement

	1997	1998	1999	Average
Fatal	6	4	0	3
Injury	194	77	84	119
Tow-Away	70	84	101	85
Total	270	165	185	207

The President has stated that he intends to lift the moratorium and open the border to Mexican motor carriers. Therefore, the baseline scenario is premised on an open border, with Mexican trucks operating beyond the border zone (after obtaining authority with the current forms).

Rules

As discussed above, the FMCSA is publishing three separate rules. This section briefly summarizes the provisions of the rules. For a fuller exposition, readers are advised to consult the rules directly.

The Part 365 interim final rule describes the process for Mexico-domiciled motor carriers to obtain a provisional certificate of authority, which allows carriers to operate throughout the United States. Eligible Mexico-domiciled carriers will initially receive a provisional certificate of authority; the Part 385 rule explains how they obtain permanent operating authority. A brief description of the Part 365 rule follows.

- 1) The form OP-1(MX) is revised to include additional questions about motor carriers' safety record and compliance with applicable safety requirements. Carriers will have to demonstrate knowledge of the FMCSRs and specifically certify that they are in compliance with the applicable FMCSRs.
- 2) The revised form OP-1(MX) also requires applicants to provide a narrative explanation of their management plan to ensure safety compliance.
- 3) In addition to filing the OP-1(MX) form, applicants must also submit both the MCS-150 and the BOC-3. The BOC-3 reports agents for service of process in each State the carrier operates in.
- 4) Applicants must verify that they have required levels of insurance, issued by an insurance company licensed in the United States.
- 5) Carriers that have previously filed an OP-1(MX) must refile the new form.
- 6) Carriers are required to notify the FMCSA of any change in information on the OP-1(MX), such as a change in their name, addressees, or agents for service of process. Changes would have to be reported within 45 days.
- 7) International charter and tour bus operators will no longer file the OP-1(P), but will be required to file the OP-1(MX) instead. Other Mexican passenger carriers who seek to operate in the United States under NAFTA provisions also have to file the OP-1(MX).
- 8) Applicants must be registered with the Mexican Government's Secretaria de Comunicaciones y Transportes (SCT).
- 9) Carriers must pass a Pre-authorization Safety Audit (PASA) prior to obtaining provisional operating authority. This includes verification of driver qualifications for each driver who will be driving under this authority, including confirming the validity of each drivers Licencia de Federal de Conductor. Applicants that do not pass the PASA will not receive provisional certificate of authority. The PASA is described in detail in the IFR.
- 10) Carriers must have a CVSA decal for three years after receiving permanent authority.

The Part 368 final rule revises the OP-2 form. This form is filed by Mexican motor carriers wishing to obtain a provisional certificate of registration, which allows them to operate in the U.S. municipalities and commercial zones adjacent to Mexico in the four border States. Many of the changes would match those of the OP-1(MX); however, these applicants do not need to undergo a PASA. The changes are described below.

- 1) The OP-2 includes additional questions about motor carriers' safety records and compliance with applicable safety requirements. Carriers must demonstrate knowledge of the FMCSRs and specifically certify that they are in compliance with the applicable FMCSRs.
- 2) Applicants must also provide a narrative explanation of their management plan to ensure safety compliance.
- 3) In addition to filing the OP-2 form, applicants also have to submit both the MCS-150 and BOC-3 forms.

- 4) Carriers will be required to update the OP-2 when they change contact-related information, such as their name, addressees, or agents for service of process. Changes must be reported within 45 days.
- 5) Carriers that have previously filed an OP-2 are required to refile the new form within 18 months
- 6) Applicants must be registered with the Mexican Government's Secretaria de Comunicaciones y Transportes (SCT).

The Part 385 interim final rule is the most complex of the three rules analyzed. This rule details a safety fitness oversight program intended to ensure that Mexican carriers operating in the United States continue to comply with the FMCSRs and operate safely. The IFR establishes an 18-month monitoring period, during which carriers would be subject to intensive oversight and review. During this period, carriers would have provisional certificates of authority (for OP-1(MX) carriers) or provisional certificates of registration (for OP-2 carriers). OP-1(MX) carriers would need to pass a compliance review to obtain permanent certificates of authority, and OP-2 carriers would have to pass a safety audit to receive permanent certificates of registration.

All vehicles which operate beyond the border zone must have a Commercial Vehicle Safety Alliance (CVSA) sticker for the entire 18 month safety monitoring period. These vehicles must also a CVSA sticker for 3 years after being granted permanent operating authority. Only CVSA-certified inspectors may give a CVSA sticker, which verifies that a vehicle has passed an inspection and meets the appropriate vehicle requirements. CVSA stickers are valid for three months.

All Mexico-domiciled motor carriers, whether they have provisional certificates of authority or provisional certificates of registration, will be subject to intensified roadside inspections. Many states now use the Inspection Selection System (ISS), a computer based program that highlights specific vehicles and drivers for roadside inspections. ISS chooses vehicles for inspections based on the number of inspections they have previously undergone and their safety and compliance history. Although not specifically stated in the IFR, the FMCSA plans on modifying the ISS to highlight carriers with provisional certificates of registration or operating authority.

Mexico-domiciled carriers with provisional operating authority need a Compliance Review (CR) within 18 months of receiving such authority. The CR may be conducted at the carrier's place of business, at a border crossing, or at an alternative location in the United States. Carriers with provisional certificates of registration need a safety audit within 18 months.

Carriers that, through no fault of their own, do not have a compliance review or safety audit within 18 months may continue to operate under provisional status for up to 6 months.

If a carrier is assigned an "unsatisfactory" rating following a CR, or a safety audit determines that the carrier does not have or exercise adequate safety management

controls and procedures to ensure its ability to operate safely, the FMCSA will notify the carrier that its registration will be suspended. Carriers' registration will be suspended within 15 days from the service date of the notice, unless the carrier demonstrates within 10 days of the service date that the CR or safety audit contains a material error. Carriers who have had their provisional operating authority or certificate of registration suspended must immediately cease operations in the United States. These carriers will also receive notification that their authority or registration will be revoked, unless they can show evidence of corrective action within 30 days.

If a carrier does not submit to a CR or safety audit expeditiously, the FMCSA will provide a written notice of intent to suspend that carrier's registration within 15 days. The suspension shall remain valid until the carrier allows the FMCSA to conduct a CR or safety audit.

Carriers who have had their certificates of registration or authority revoked may not reapply sooner than 30 days from the date of their revocation. These carriers will be required to demonstrate that they have corrected the deficiencies which led to the earlier revocation.

If the FMCSA determines, through roadside inspections or other means, that a carrier has committed certain egregious violations, the FMCSA will either arrange for an expedited compliance review, or take other immediate action. The "zero-tolerance" violations or actions that will lead to such expedited action are listed below.

- 1) Use of a driver with no Licensia Federal de Conductor (LFC) or Commercial Drivers License (CDL), or with a CDL or LFC that is false, revoked, expired, or with no Hazardous Materials endorsement when one is required;
- 2) Returning to the United States with a vehicle which has been placed OOS without making the necessary repairs;
- 3) Having any incidents in the United States involving a highway route controlled quantity of
 - a. a highway route controlled quantity Class 7 radioactive material,
 - b. a Class 1, Division 1.1, 1.2, or 1.3 explosive,
 - c. a poison inhalation Hazard Zone A or B material;
- 4) Having two or more incidents stemming from a carrier act of commission or omission in the United States involving any other HM;
- 5) Using a driver who tests positive for drugs or alcohol or who refuses to submit to a required test;
- 6) Operating in the United States without the required level of insurance; or
- 7) Having an aggregate OOS rate of 50 percent for three inspections during a consecutive 90 day period.

The primary goal of these rules is to enhance the FMCSA's ability to assure the safety of Mexican motor carriers operating in the United States. The proposals increase the reporting requirements of Mexican carriers, so that the FMCSA can review their safety record and capabilities before issuing authority to operate in the United States. The

safety screening process provides the FMCSA with additional information and processes to monitor and enforce the safety of these motor carriers once they are operating in the United States.

Costs and Benefits of the Proposals

No attempt was made to estimate the benefits of each individual rule, since the three rules are a package. It is difficult to calculate a comprehensive benefit from the improved data we will obtain from the revised OP-1(MX) and OP-2 forms, but it would be impossible to implement the safety monitoring system without the enhanced data from Mexican carriers. The information contained on these new forms will be used to evaluate carriers' safety programs and understanding of the FMCSRs, and to help in the targeting of potentially unsafe carriers. However, it is difficult to quantify these benefits. Accordingly, the benefits of all three rules are reported together. Costs, on the other hand, were broken out for each rule.

As discussed above, the baseline scenario is that the President will open the border, and that Mexican motor carriers will begin operating throughout the United States after completing the existing forms and receiving operating authority. Under the baseline, there will be no PASAs, requirement for CVSA stickers, 18-month compliance reviews or safety audits, or any other provisions of the three rules.

Values and Assumptions

This report previously referred to a file of 11,787 Mexican carriers who have operated in the United States in recent years. Some reviewers have suggested that many of these carriers no longer operate in the United States. A review of inspection and accident records in 2000 found approximately 4,500 Mexican motor carriers. Approximately 10,000 Mexican carriers currently have operating authority. Therefore, we constructed three different baseline scenarios for the number of Mexican carriers currently operating in the United States, a low (4,500), medium (9,500) and high (11,787) scenario.

Approximately 1,300 Mexican carriers have filed an OP-2 form annually over the last several years (and a similar number have been granted authority). Only 190 OP-1(MX) applications are pending, as Mexican carriers stopped filing these forms when it became clear that these forms were not being processed. We would expect applications to continue at this pace if there were no significant changes in circumstances. However, the President has announced that he intends to lift the moratorium. Accordingly, we define the baseline in this analysis as having the moratorium lifted, but without these rules being implemented. The impact of these rules is therefore just the change due to these rules, given that the border is already open.

We estimate that under the baseline, the number of new carriers applying for authority (under both the OP-1(MX) and OP-2 forms) would increase by 10 percent, to 1,430 (1,300 plus 130). Applications would increase because Mexico-domiciled motor carriers would seek to take advantage of the opportunity to operate throughout the United States.

Under these rules, the number of motor carriers would fall somewhere between the 1,300 who are currently applying and the 1,430 who would apply under the baseline. We assume that after the implementation of these rules, the number of Mexico-domiciled carriers would increase 5 percent from the present level, to 1,365. Some carriers will be discouraged from applying because of the more stringent application and oversight procedures, and some will apply but not receive provisional operating authority because they fail the pre-authorization safety audit.

This translates into 13,152 applicants in the first year for the high estimate, 10,865 for the medium estimate, and 5,865 for the low estimate. As was noted above, the FMCSA estimates that almost 600,000 motor carriers are currently operating in the United States.

Under both the baseline and the rules, all Mexico-domiciled carriers who wish to operate in the United States, whether they currently have operating authority or not, will have to file either an OP-1(MX) or an OP-2 application form. The current OP-1(MX) and OP-2 forms take two hours to complete, and have been reviewed by the Office of Management and Budget (OMB). We estimate that it takes four hours to complete the revised forms.

As was noted above, the vast majority of Mexican motor carriers currently operating in the United States have OP-2 certificates of registration. We estimate that half of these carriers will switch to OP-1(MX) authority, while the other half will continue operating within U.S. municipalities and commercial zones along the U.S. Mexican border pursuant to OP-2 authority. We assume that the new carriers will be more likely than current carriers to apply for OP-2 certificates of registration, since most of the large carriers who would presumably benefit from expanded U.S. operations are already operating within U.S. municipalities and commercial zones along the U.S.-Mexican border under OP-2 authority. While some new applicants will also want to take advantage of the opportunity to operate throughout the United States, many will not have the financial and administrative wherewithal to benefit from the enlarged operations allowed (Giermanski and McGhee). Accordingly, the Agency estimates that three quarters of all new applicants will apply for OP-2 authority, with one quarter requesting OP-1(MX) authority. This applies under the rules and the baseline scenario.

The filing fee will remain \$300 per authority (carriers may have multiple authorities). Virtually all Mexico-domiciled carriers currently operating in the United States have OP-2 certificates of registration. Under the rules, all current carriers must refile for authority, but only those who are changing the type of authority must pay the filing fee. All new applicants are required to pay the fee. Carriers who currently have OP-2 certificates of registration and wish to retain that authority have 18 months to reapply, and they are not required to pay the \$300 filing fee. Similar requirements apply under the baseline, except current carriers who do not change their authority (from OP-2 to OP-1(MX)) are not required to refile.

One-quarter of carriers will need to revise their forms annually because of a new name, address, or agent for service of process. This is the estimated rate of these changes for

domestic motor carriers. This only applies under the rules, as carriers are not currently required to inform the agency of these changes.

The FMCSA does not possess information on wages in the Mexican trucking industry. Therefore, we used several data sources to develop an estimate of motor carrier wages. Specifically, data from the World Bank shows that the labor cost per worker in the manufacturing sector in Mexico from 1995 to 1999 was \$7,607 per year. The comparable figure for the United States was \$28,907. The ratio of these two figures is 0.263, which can be used as a rough approximation of the ratio of Mexican to U.S. wages. According to the U.S. Bureau of Labor Statistics Occupational Employment Survey, the mean wage for managerial and administrative occupations (those most likely to be filling out the forms) in Standard Industrial Code (SIC) 42, which includes trucking companies, was \$25.50. Adding 33 percent to that to cover fringe benefits yields a U.S. wage of \$33.92. Multiplying that figure by 0.263 results in an average Mexican wage (for those completing the OP-1(MX) and OP-2 forms) of \$8.92.

Nationwide, 2.45 million CMVs were inspected in 2000. This figure has been growing by 90,000 per year. 47,000 Mexican CMVs were inspected in 2000, and that number has been growing by 10,000 annually. The FMCSA has received funding to hire and train more than 200 additional inspectors to work along the border between the United States and Mexico. We estimate that they will be able to conduct 101,000 inspections per year. Thus, in 2002, approximately 168,000 Mexico-domiciled CMVs would be inspected under the baseline scenario. (These inspections are included in the baseline because the extra inspectors will be hired regardless of whether these rules are promulgated). However, given that we anticipate increased growth in applicants when the moratorium is modified, we estimate that the FMCSA will increase inspections of Mexico-domiciled CMVs by an additional 10,000 inspections, to 178,000, even in the absence of these rules. These inspections will increase by 10,000 per year.

The pre-authorization safety audits will be somewhat less comprehensive than our current compliance reviews. The average compliance review takes six hours, with significant upside variation. We estimate that the safety audit will take four hours. The audit will also require another four hours of preparation, paperwork, and review by the auditor, and four hours of travel time. We estimate travel costs will equal \$250 per PASA. We previously calculated that the average wage of safety inspectors and safety auditors, including fringe benefits, is approximately \$35 per hour. The wages for non-federal employees who may also conduct safety audits are likely to be similar. As noted above, wages for employees of Mexican carriers are lower than for their American counterparts. We estimated above that the wages of employees of Mexico-domiciled motor carriers likely to fill out forms is under \$9 per hour. We doubled this figure to \$18 for the remainder of this analysis, to take account for extra work that may be required to prepare for a safety review, and because more than one employee may participate in the review.

Congress has directed the FMCSA to conduct at least half of the PASAs on-site at the applicants' place of business, and requires that these on-site PASAs represent at least 50 percent of annual estimated truck traffic. Congress also directed the FMCSA to conduct

at least 50 percent of all compliance reviews on-site, and requires that any carrier with four or more CMVs that was not subject to an on-site PASA receive an on-site compliance review. These directives are not part of these rules, but the FMCSA will meet these minimal requirements. This analysis conservatively assumes that all PASAs and compliance reviews take place at the applicant motor carrier's place of business.

Dollar figures are discounted using a seven percent discount rate.

Baseline

Under the middle estimate for the baseline scenario, approximately 10,930 Mexico-domiciled motor carriers operate in the United States in the first year. This includes the 9,500 currently operating, and 1,430 new applicants (1,300 plus ten percent extra under the baseline). By the tenth year, there are approximately 23,800 Mexico-domiciled motor carriers operating in the United States. Under the high estimate, there are 13,217 Mexico-domiciled carriers the first year, and 26,087 the last year. Under the low estimate, the comparable figures are 5,930 in year one and 18,800 in year ten.

Under the middle estimate, carriers will spend approximately \$195,000 to complete the form in the first year, and almost \$25,000 annually in years 2 through 10. The ten-year cost is approximately \$425,000. The filing fee costs motor carriers \$1.9 million in the first year, and \$429,000 a year thereafter. Total carrier costs under the baseline equal \$2.0 million in the first year, and \$455,000 in later years. Ten-year costs are \$6.1 million, \$4.7 million discounted. Carriers are not subject to safety audits, so there is no cost for them under the baseline.

The total cost under the low estimate is \$5.3 million, \$3.9 million discounted. For the high estimate, the comparable figures are \$6.5 million and \$5.0 million.

Part 365 and 368 Rules

For all three estimates, there will be slightly fewer Mexico-domiciled carriers operating in the United States than under the baseline. Under the medium estimate, there will be 10,800 carriers applying the first year, and another 1,365 applicants per year in later years. At the end of ten years there will be approximately 22,500 Mexico-domiciled motor carriers operating in the United States (compared to 23,800 under the baseline).

Under the medium estimate, this translates into \$386,000 for filling out the forms in the first year, and \$46,000 in later years. The ten-year cost is \$803,000, \$643,000 discounted. For the low estimate, first year costs are \$207,000, and later year costs are \$46,000 (since the number of new applicants is unchanged at 1,365). Ten-year costs for completing the OP-1(MX) and OP-2 forms (not including the filing fee) are \$625,000 and \$477,000 discounted. For the high estimate, ten-year costs are \$885,000, and discounted costs are \$719,000.

We also estimated that one-quarter of all carriers have to revise their contact information annually (because of a new name, address, or agent for service of process), and that this takes half an hour per update. For the medium estimate, this results in approximately 1,358 hours annually in the first year (10,865 x 0.25 x 0.5 hours), falling slightly over the ten-year period as the number of Mexico-domiciled carriers declines. The ten-year cost of revising carrier information is \$186,000, \$125,000 discounted. For the low estimate, costs are just \$130,000, \$86,000 discounted. For the high estimate, the comparable costs are \$211,000 and \$143,000.

As noted above, Mexico-domiciled carriers applying for operating authority for the first time would have to pay a \$300 filing fee. Carriers who currently have OP-2 operating authority and refile for OP-2 authority will not have to pay the filing fee; those with OP-2 authority who apply for OP-1(MX) authority will have to pay the filing fee. Carriers who need to update their contact information with the new forms will not be required to pay the filing fee. We estimate that one half of Mexican carriers currently operating in the United States will switch from OP-2 to OP-1(MX) authority, and therefore have to pay the filing fee. This is the largest cost to carriers. For the medium estimate, ten-year costs are \$5.5 million, and discounted costs are \$4.2 million.

The main cost of these two rules is the requirement that applicants must pass a pre-authorization safety audit prior to obtaining OP-1(MX) provisional operating authority. Although Congress only requires that half of the PASAs take place on-site in Mexico, we assume that all inspections take place at their place of business. A PASA will cost applicant motor carriers \$72 each (4 hours x \$18 per hour), for a total of just under \$367,000 in the first year, and \$25,000 per year thereafter. Because of higher wages, extra hours preparing for and reviewing the PASA, and travel costs, the total costs to the government of PASAs are much higher. For the medium scenario, first year government costs for conducting the PASA are almost ten times higher than carrier costs at \$3.4 million. Ten-year government costs are \$5.5 million, approximately \$4.6 million discounted.

The agency assumes that all new applicant Mexico-domiciled carriers eventually pass the PASA, although some carriers may need some remedial work prior to operating in the United States. We believe that the implementation of these rules will deter some potential applicants; presumably those applicants who are undeterred by the more thorough application forms and the more rigorous oversight provisions of these rules would be unlikely to have any serious flaws that would disqualify them from operating in the United States.

Table 4 shows costs under both the baseline and the proposed scenario, and the net increase in costs from the Part 365 and 368 rules. Motor carrier costs increase modestly, while costs to the FMCSA jump significantly, because of the need to perform PASAs on applicants for provisional operating authority. Figures may not add due to rounding.

Table 4
Cost of Parts 365 and 368,

Ten-Year Costs, Thousands of Dollars

	Low	Medium	High
Baseline Application	\$296	\$340	\$361
Baseline Fee	\$4,965	\$5,715	\$6,058
Baseline Total	\$5,261	\$6,055	\$6,419
Rule Application	\$625	\$803	\$885
Rule Fee	\$4,770	\$5,520	\$5,863
Rule Revision	\$130	\$186	\$211
PASA, Carriers	\$408	\$588	\$670
PASA, FMCSA	\$3,794	\$5,469	\$6,235
Total Carrier	\$5,932	\$7,097	\$7,629
Total	\$9,726	\$12,566	\$13,864
Net Increase, Carrier	\$672	\$1,041	\$1,210
Net Increase, Total	\$4,466	\$6,510	\$7,446

Part 385

Determining the cost for the Part 385 NPRM (the Safety Monitoring System) is much less straightforward. The cost will depend partly on the number of carriers that do not have a satisfactory safety audit or compliance review, how carriers respond to the audit, and what measures carriers must undertake to improve their performance.

As explained above, Mexico-domiciled carriers with provisional certificates of registration must have a safety audit within 18 months; carriers with provisional operating authority must have a compliance review within that time period. Carriers with demonstrable problems, such as using a driver without a CDL, may receive a compliance review, safety audit, or other enforcement action during the 18-month provisional period. In addition, all commercial motor vehicles owned by carriers with OP-1(MX) authority must have a valid CVSA sticker during the 18 months they have provisional operating authority, and for the 3 years after they receive permanent authority.

The first step in calculating the costs (and benefits) of this part is to determine how many carriers would be involved in each step of the process. Table 5 presents information on the number of carriers and inspections, and the percent with any zero tolerance violations. Data are from inspections between 1998 and 2000.

Table 5
Violations of Mexican Trucks and Buses

Number of MX Carriers	11,787
Number of MX Carrier Inspections	6,147
First 3 insp OOS rate of 100%	7.2%
CDL	0.3%
HM 1	0%

HM 2	0%
Drug or alcohol violation	0%
Returning with unfixed vehicle	0%
Insurance violation	7.5%

6,147 distinct Mexico-domiciled carriers have been inspected in the last three years. Only two types of zero tolerance violations showed up with any regularity, insurance violations and having a high OOS rate for three or more inspections within 90 days.

The most common of these zero tolerance violations was failure to have adequate insurance. Over 14 percent of all Mexican carriers with fewer than five inspections did not have adequate insurance, while 7.5 percent of all Mexican carriers inspected lacked coverage. This suggests that carriers which operate in the United States more frequently, and that have greater interaction with the FMCSA and other enforcement agencies, are less likely to have insurance violations. Greater exposure may also lead to a decrease in other violations, although the data are not detailed enough to allow us to test this hypothesis. This is consistent with data on domestic new entrants, which have been shown to experience a drop in violations with additional years of experience (Volpe).

The second most frequent zero tolerance violation is an OOS rate of 50 percent or higher for three or more inspections within 90 days. We were unable to determine what percent of Mexico-domiciled carriers currently meet or exceed this standard. Therefore, Table five shows a proxy for this violation, the percent of carriers with an OOS rate of 100 percent for their first three inspections within 90 days. 7.2 percent of Mexico-domiciled carriers inspected had an OOS rate of 100 percent. We assumed that 14.4 percent of Mexican carriers have an OOS rate of 50 percent or higher, twice as many as those with a 100 percent OOS rate.

Very few HM crashes were reported in the MCMIS file, and it was not always possible to determine precisely what material was involved. FMCSA's HM division reviewed data on the types of HM involved in crashes, and it appears that there were no incidents with Mexican carriers involving the most toxic HM. There were no reports of Mexican carriers with two or more HM incidents on the MCMIS file, and none that we were able to locate on Research and Special Program's Hazardous Materials Information System (HMIS). We were also unable to find on the MCMIS inspection file any examples of several other violations, including drug and alcohol program violations, operating outside of authorized areas, and reentering the United States before fixing vehicle violations from a previous inspection. This is not surprising, since roadside inspections do not generally gather information on these types of violations.

The absence of these violations from the inspection file does not necessarily mean that these violations do not occur; indeed, both the inspector general report and the comments submitted by Public Citizen cite instances of these types of zero tolerance violations.

Accordingly, we assume that the first year this rule is implemented, 20 percent of all Mexico-domiciled carriers applying for authority will have a zero tolerance violation and

will receive either an expedited safety review or a letter requiring that the carrier submit a written response demonstrating that they have taken corrective action. We assume these carriers will improve in later years, so that in their second year of operation, 15 percent will have a zero tolerance violation, and 10 percent will have any of these violations in their third year of operation. Carriers with more than three years of operations in the United States are assumed not to have any zero-tolerance reviews. Furthermore, we forecast that 25 percent of carriers with zero-tolerance violations will fail their safety review or submit an inadequate response to the demand for corrective action. These carriers will have their operating authority revoked.

All carriers must have either a safety audit or a compliance review within 18 months of receiving provisional operating authority or provisional certificate of registration. For computational convenience, we assume that all audits and reviews are completed in the year following the carrier’s application for authority.

Finally, the rule requires that all vehicles operated by Mexico-domiciled carriers with provisional operating authority must have a CVSA sticker when driving in the United States. These vehicles must also have a CVSA sticker for the 3 years after they receive permanent authority. Inspectors place these stickers on vehicles after they pass a level 1 or level 5 roadside inspection, which take approximately 45 minutes. Inspectors review a vehicle’s compliance with the FMCSRs, and they check vehicle brakes, lights, tires, and other important vehicle systems. CVSA stickers are valid for 90 days, so each vehicle would need four CVSA inspections per year. Mexico-domiciled carriers have an average of 6.3 trucks each, and the FMCSA believes this figure will remain constant in the future.

Because all Mexican carriers operating in the United States will have to refile or make an initial filing of either the OP-1(MX) or OP-2 forms, the number of carriers needing PASAs, safety audits, and compliance reviews will also be highest in the early years.

Table six shows the number of applicants, safety audits, zero-tolerance reviews, closures and CVSA inspections for the three scenarios. Data are presented for the first year and for 10 years. Audits include PASAs, safety audits, and compliance reviews. CVSA inspections in this table consists of those inspections that take place on carriers applying for OP-1(MX) authority.

Table 6
Applicants, Safety Audits, and Zero-Tolerance Reviews

Year	Low Estimate		Medium Estimate		High Estimate	
	1	All	1	All	1	All
Applicants	5,865	18,150	10,865	23,150	13,152	25,437
Audits	2,591	22,448	5,091	29,948	6,235	33,378
0-tolerance	1,173	7,690	2,173	9,940	2,630	10,969
Closures	293	3,601	543	4,663	658	5,149
CVSA Insp	68,720	603,363	135,020	901,713	165,346	1,038,178

Mexico-domiciled carriers that fail to demonstrate that they can operate safely may have their authority suspended after either the 18-month review or a zero-tolerance review. We discussed previously the agency's estimate that 10 percent of Mexico-domiciled carriers will "fail" the 18-month safety audit, and that 25 percent of those having a zero-tolerance review will "fail". The agency hopes that the actual percentage of "failures" is lower than this, as the pre-authorization safety audits should weed out some marginal carriers. Nonetheless, in order to remain conservative, the agency used the figures above in this analysis.

Carriers that "fail" the 18-month safety audit or compliance review will receive a notice of suspension, along with a demand for corrective action. These carriers will then have 30 days from the date of the suspension to present the FMCSA evidence of any corrective action required. For purposes of this evaluation, we assume that carriers who "fail" the 18-month audit will be unable to operate in the United States for two weeks, and those who "fail" a zero-tolerance review will be unable to operate for four weeks. Being unable to operate in the United States imposes some costs on these carriers; we estimate that the average cost is \$500 per week.

Some carriers who are unable to operate in the United States would presumably face significant challenges bringing their operations up to the level required to be allowed to continue their U.S. operations. The equipment or operational modifications may be so costly that they decide not to attempt to renew their U.S. operations. We believe that half of the carriers who "fail" the audits or zero-tolerance reviews will not attempt to renew their U.S. operations. The other half will successfully renew their operations by submitting an improvement plan to the FMCSA, and revising their practices in accordance with the plan. We estimate that this will cost \$1,000 per improvement plan. We estimate that the FMCSA will review each plan for three hours, and that personnel who review the plans are paid \$40 per hour.

A larger category of costs is the costs of revoking the U.S. operating authority of carriers that have their registration or authority revoked. Determining these costs is extremely difficult. There would be no cost to the overall U.S. economy. The carriers with revoked authority represent a small percent of Mexican carriers operating in the United States. Because they constitute such a small percentage of freight shipments, revoking their authority to operate in the United States should not have any overall impact on cross-border supply (and therefore prices) in the trucking industry.

Most shippers who use carriers who are no longer allowed to operate in the United States should be able to find alternate carriers relatively expeditiously, although perhaps not immediately.

Owners of these firms will presumably face some costs, with the magnitude of costs depending on the extent to which they focused on U.S. operations. Carriers which largely operated in the United States may be forced to close, while other carriers would have to scale back their operations. Costs for either type of carrier may include such

things as lost office rent, advertising, and capital investments. Carriers forced to close may have to sell their fleet, or, if they rent vehicles, to escape from their rental contracts, which may require that they pay penalties.

While there may be costs to the carriers that close, most of these are not real social costs. Penalty costs of broken rental agreements represent costs to the carrier but an equal benefit to the rental company. Forcing a carrier to pay this penalty does not change the amount of resources available, it merely redistributes them from carriers to truck leasing companies.

Truck drivers working for closed carriers may suffer some unemployment, which would impose costs on them and society (as their potential labor is lost). While the market for U.S. truck drivers has been very tight over the last several years, we do not have comparable information on Mexican demand for truck drivers (Mexican drivers may not be employed by U.S. carriers without authorization by the Immigration and Naturalization Service).

The relevant economic question is whether closing carriers, or scaling back their U.S. operations, imposes real resource costs. Resource costs are costs incurred from using resources in less than optimal tasks, and they are not offset by equivalent gains elsewhere. Real resource costs, such as time spent filling out an application or time when a driver is looking for work, are costs that cannot be used for any alternate, more productive, activity. It is likely that this proposal would impose some modest resource costs. The most likely costs are those for trucks which are unused until sold to a new owner, the time it takes some drivers to find new jobs, and time for shippers to find new carriers. As discussed above, we do not believe any of these costs are major, as there is a fairly efficient market for drivers and used vehicles. Nonetheless, we have conservatively estimated that revoking a carrier's authority to operate in the United States imposes a cost of \$10,000 per carrier.

As discussed previously, the FMCSA estimates that under the baseline scenario, 178,000 Mexico-domiciled CMVs will be inspected in 2002, and that the number would grow by 10,000 per year. This equals approximately 2.5 inspections per CMV. Under the safety monitoring system IFR, vehicles operated by Mexico-domiciled carriers with provisional operating authority must display a CVSA sticker when operating in the United States. They must also have a CVSA sticker for the 3 years following their receipt of permanent operating authority. CVSA stickers are valid for 90 days, so these vehicles will need to be inspected 6 times under provisional authority, and 12 times under permanent authority. Using an average of 6.6 CMVs per Mexico-domiciled carrier, this means that, under the medium scenario, approximately 135,000 CVSA inspections will have to be conducted in the year 2002, with a similar number for the next few years, until the number falls dramatically by the 5th year. The FMCSA also assumes that CMVs of carriers with OP-2 authority will be inspected at the same rate as under the baseline, 2.5 inspections per CMV in 2002 (dropping slightly in later years, as the baseline number of inspections grows more rapidly than the baseline number of carriers). In order to both conduct the CVSA inspections on OP-1(MX) CMVs and maintain the same rate of inspection for OP-

2 CMVs, we will need to perform approximately 229,000 inspections in 2002. This is about 51,000 more inspections than would be performed under the baseline scenario. For the first few years the number of inspections needed for this IFR and to maintain the same frequency of inspections for OP-2 carriers exceeds the baseline number of inspections by about 50,000 to 70,000. However, in later years the number of inspections of Mexico-domiciled CMVs under the baseline is much higher than needed under this rule, since OP-1(MX) CMVs need only be inspected at an elevated rate for the first 4 and a half years (18 months under the provisional certificates of authority and an additional 3 years).

This analysis does not include any extra costs for inspections of Mexico-domiciled CMVs. While these CMVs would be subject to an additional 51,000 inspections in 2002, they will not be subject to any added inspections in later years. We assume that the 51,000 extra inspections will result in fewer inspections of non-Mexico-domiciled CMVs. Since overall inspections are increasing by about 110,000 annually, there will be no decrease in the number of domestic inspections in 2002, merely a reduction in the rate of growth. There will be no change in the rate of growth in later years, since the number of inspections of Mexico-domiciled CMVs in the baseline exceeds the number needed under this rule.

Table 7 summarizes the costs of this rule for the low, medium and high estimates. The costs are fairly modest for all three rules, ranging from about \$44 to \$62 million over 10 years. Discounted costs are even lower. Mexico-domiciled carriers bear approximately 60 percent of the total costs, with the FMCSA assuming the remainder. By far the largest category of costs for Mexico-domiciled carriers is closure costs, which account for two-thirds of their total costs. Not all Mexico-domiciled carriers face the closure costs; only those who the FMCSA bars from operating in the United States face closure costs. The costs for carriers that are not closed are obviously significantly lower.

Not surprisingly, costs increase as the assumed number of Mexico-domiciled carriers increase. The high estimate costs almost 50 percent more than the low estimate.

Table 7
Costs of Part 385 Interim Final Rule
Thousands of Dollars

	Low		Medium		High	
	Year 1	All	Year 1	All	Year 1	All
MX Audits	\$0	\$1,209	\$0	\$1,569	\$0	\$1,733
MX 0-Tol	\$84	\$554	\$156	\$716	\$189	\$790
MX Imp Plan	\$733	\$7,324	\$1,358	\$9,480	\$1,644	\$10,466
MX Closure	\$1,466	\$18,005	\$2,716	\$23,317	\$3,288	\$25,747
MX Total	\$2,284	\$27,091	\$4,231	\$35,081	\$5,121	\$38,736
FMCSA Audit	\$0	\$11,246	\$0	\$14,596	\$0	\$16,128
FMCSA 0-Tol	\$786	\$5,152	\$1,456	\$6,660	\$1,762	\$7,349

FMCSA Imp Plan	\$35	\$231	\$65	\$298	\$79	\$329
FMCSA Total	\$821	\$16,629	\$1,521	\$21,554	\$1,841	\$23,806
Total Cost	\$3,105	\$43,719	\$5,752	\$56,635	\$6,963	\$62,543

Table 8 summarizes cost data from tables 4 and 7, and it shows the total cost of the three rules for each of the three scenarios. The safety monitoring system rule accounts for the majority of the total costs of these rules. The costs are relatively minor for all three estimates.

Table 8
Ten-Year Cost of Rules,
Millions of Dollars

	Low		Medium		High	
	Year 1	All	Year 1	All	Year 1	All
MX Carriers	\$3.8	\$33.0	\$6.8	\$42.2	\$8.2	\$46.4
Government	\$2.6	\$20.4	\$4.9	\$27.0	\$6.0	\$30.0
Total	\$6.3	\$53.4	\$11.8	\$69.2	\$14.2	\$76.4

Benefits

It is harder to estimate the benefits from these proposals than the costs. The agency believes these proposals will improve the overall safety of Mexican carriers operating in the United States, and thereby reduce the number of crashes they are involved in. These rules will dramatically increase the amount of information that the FMCSA has about Mexico-domiciled motor carriers, and allow the agency to respond quickly to likely safety threats.

The PASAs will guarantee that Mexico-domiciled carriers are familiar, and in compliance, with the FMCSRs prior to their operating in the United States. The revised forms OP-1(MX) and OP-2 will also provide the FMCSA with additional information about the number of drivers and vehicles, the types of cargo carried, and the type of carrier operations. The extra inspections that will be carried out will provide almost real-time information on carriers' compliance with the FMCSRs. The extra information garnered from these rules will be used in the enforcement provisions of the part 385 rule, and in the FMCSA's regular enforcement provisions, to ensure that these carriers operate safely.

While we believe that the combined impact of these three rules will reduce the number of crashes Mexico-domiciled carriers are involved in, estimating the specific number of crashes deterred is extremely speculative. (This uncertainty is largely due to the absence of reliable information on Mexican carriers, which is why one of the primary goals of these proposals is to allow the FMCSA to gather complete, reliable, and timely data on Mexico-domiciled trucks and carriers.) Therefore, rather than provide a specific and unreliable point estimate of the number of crashes deterred by these rules, we calculated the number of crashes that would have to be deterred to make the rules cost-effective.

The preferred analysis method would be to determine the number of Mexican trucks currently operating in the United States, and the number of crashes these vehicles are involved in. This would allow us to calculate the rate of crashes per Mexican truck. Using the number of new carriers anticipated and the average number of trucks per carrier, we could then forecast the baseline number of Mexican truck-involved crashes. This would represent the number of crashes involving Mexican trucks in the absence of these proposals. We could then perform similar calculations on U.S. trucks to determine the crash rate per U.S. truck. Multiplying the U.S. rate by the forecast number of Mexican trucks would yield the maximum likely benefit of the proposals, that is, the number of crashes that would be deterred if Mexican trucks had the same crash rate as U.S. trucks. This would be the maximum benefit, since the best that can be hoped for from these proposals is that they would lower the Mexican truck crash rate to the U.S. level.

Unfortunately, existing data is not sufficient to allow us to make these calculations. The FMCSA only knows the number of trucks owned by 4,625 of the 11,787 Mexican carriers for which we have any data, less than 40 percent of the total. With so much missing data, any crash rate estimate would be extremely unreliable. Therefore, any calculation of the benefit of lowering Mexican trucks crash rates to the U.S. level would be extremely uncertain, and most likely fall in the margin of error.

Comparisons are also hindered by the different types of operations characteristic of Mexican and U.S. carriers. Most Mexican carriers currently operating in the United States are engaged in drayage operations, primarily hauling freight short distances over the border, where the freight is then loaded onto long-haul vehicles. By contrast, very few US carriers are primarily drayage carriers. A comparison of the crash rates may reflect the different types of operations as much as the impact of operating under different regulatory regimes.

Because of these limitations, the FMCSA used a cost effectiveness approach, whereby we estimated the number of crashes that would have to be deterred in order for the proposals to be cost effective.

We estimated above that Mexican carriers are involved in an average of 207 crashes in the United States annually. This number will presumably increase, as additional Mexican carriers operate in the United States and they begin to drive throughout the country. Some of these carriers will, at least initially, have less familiarity with the FMCSRs and

the roads on which they are driving. Also, we assumed that 1,430 Mexico-domiciled carriers will receive authority every year under the baseline scenario, while only 1,365 will under these rules. Absent these rules, the total number of Mexican-CMV involved crashes is likely to increase.

Two hundred and seven crashes per year translates into about 0.0218 crashes per carrier per year under the medium option. We assumed that this rate is the same for all 3 options, as relaxing this assumption yields the counterintuitive result that the baseline number of crashes in the low option is almost twice that in the high option. Given the anticipated increase in the number of carriers, we would expect these carriers to be involved in additional crashes over the next ten years. In the absence of these proposed rules, we estimate that Mexican carriers would be involved in 4,206 crashes in the next ten years for the high estimate, 3,700 crashes for the medium estimate, and 2,618 for the low estimate.

If these rules were not enacted, it is possible that the number of crashes would grow even faster, since some Mexican carriers with little experience would be operating on unfamiliar U.S. roads. These rules require Mexican carriers to demonstrate an understanding of the FMCSRs before authority is granted, and provide for much more rigorous oversight than is currently required. Without these provisions, Mexican carriers operating in the United States would have less knowledge of Federal safety regulations, facing a potentially steep learning curve.

Table 9
Breakeven Number and Percent of Crashes Deterred
To Make Proposals Cost Effective

	Low		Medium		High	
	Number	Percent	Number	Percent	Number	Percent
Year 1	68	53%	130	55%	158	55%
Year 10	50	13%	51	10%	51	9%
Total	640	24%	838	23%	929	22%

Table 9 shows the number of crashes that must be deterred to make the rules cost-effective. The breakeven percentages, while not negligible, are certainly reasonable. Effectiveness is based on an average truck involved crash cost of \$75,637 (Zaloshnja et al.). Since the baseline number of crashes is expected to rise over the next ten years in the absence of these rules, the breakeven percent of crashes that must be deterred falls equivalently. This can be gleaned from the difference between the breakeven percentages for years 1 and 10. For the high estimate, more than half of all crashes must be deterred in the first year; by the tenth year, only one-eleventh must be deterred. The rates fall equally rapidly for the other estimates, and beyond the ten-year mark. Extending the analysis beyond ten years would show that the percent of crashes that must be deterred would continue to fall.

As noted above, it is impossible to reliably predict the benefits of these proposals. However, it is reasonable to expect that these proposals will deter enough crashes to be cost effective. Some of these carriers will be either new to the United States or new to the specific States in which they are operating. In addition, some of the Mexican carriers operating in the United States will presumably not be entirely familiar with the FMCSRs, and these carriers may be especially prone to accidents. Requiring applicant Mexican carriers to offer a concrete safety management plan will force them to review the FMCSRs, which in itself may have a salutary safety impact. Of course, revoking the authority of carriers that prove unable to exercise basic safety management controls will also have a beneficial impact on crashes.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement and Fairness Act, requires federal agencies to analyze the impact of rulemakings on small entities, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. We do not believe that these rules meet the threshold values for requiring a RFA analysis, since the anticipated impact is fairly small. Nonetheless, because of the public interest in these rules, the FMCSA has prepared this RFA analysis. This analysis shows that the three NAFTA rules will not have a significant economic impact on a substantial number of small entities.

A RFA analysis must include the following elements:

- 1) A description of the reasons why action by the agency is being considered;
- 2) A succinct statement of the objectives of, and the legal basis for, the rule;
- 3) A description of, and, where feasible, an estimate of the number of small entities to which the rule will apply;
- 4) A description of the proposed reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and
- 5) An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the rule.

Each initial RFA shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as –

- 1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
- 2) The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
- 3) The use of performance rather than design standards; and
- 4) An exemption from coverage of the rule, or any part thereof, for small entities.

The following sections contain the FMCSA's RFA analysis.

The FMCSA is considering these actions because of the imminent opening of the border to Mexican CMVs. As described above, a NAFTA dispute resolution tribunal recently ruled that the United States violated NAFTA by failing to allow Mexican vehicles greater access to the United States. The U.S. and Mexican governments are currently negotiating what steps to take next. Given the tribunal's ruling, it appears likely that Mexican trucks and buses will gain increased access to the United States.

The United States does not currently have in place a system to ensure the safety of Mexican carriers operating in the United States. Mexican carriers are subject to the same safety regulations as domestic carriers when operating in the United States. However, FMCSA's enforcement of the FMCSRs has become increasingly data dependent in the last several years. Several programs have been put in place to continually analyze crash rates, OOS rates, compliance review records, and other data sources to allow the agency to focus on high-risk carriers. This strategy is only effective if the agency has adequate data on carriers' size, operations, and history. We do not currently have this type of information on Mexican carriers. Mexican carriers operating in the United States do not have to provide the agency with the sort of detailed operational information required from domestic carriers. Because of their limited range of operations, we do not have adequate information on their crash experience, OOS rates, or overall safety.

Thus, one goal of these rules is to develop sufficient information to allow the agency to monitor Mexico-domiciled carriers. Mexico-domiciled carriers must complete a Motor Carrier Identification Form (MCS-150) prior to operating in the United States, which includes questions about carrier operations and the number of drivers and vehicles employed. Carriers must also update their OP-1(MX) or OP-2 forms when their situation changes. This will allow the FMCSA to better monitor these carriers, and to quickly determine whether their safety or OOS record changes. In addition, Mexico-domiciled carriers must pass a pre-authorization safety audit (PASA) prior to obtaining authority to operate beyond the border commercial zones. In addition to providing specific information on the carriers operations, the PASA will ensure that carriers are familiar with, and complying with, the FMCSRs.

The PASA should prevent some unsafe carriers from obtaining operating authority, as carriers which are unable to demonstrate familiarity with the FMCSRs will not be granted authority to operate in the United States. The more stringent oversight procedures will also allow the FMCSA to respond more quickly when safety problems do emerge. The safety audits and CVSA inspections will provide the FMCSA with more detailed information about Mexico-domiciled carriers, and allow the agency to act appropriately upon discovering safety problems.

The objective of these rules is to ensure the safety of Mexico-domiciled carriers operating in the United States. The rules describe what additional information Mexico-domiciled carriers will have to submit, and outline the procedure for dealing with possible safety problems.

Under 49 USC 13902, all carriers registered by the agency must be fit, willing and able to comply with our safety regulations. Safety fitness is a condition of all registrations issued by the agency. The safety monitoring system, combined with the safety certifications and other information to be submitted in the OP-1(MX) and OP-2 applications, are means of ensuring that: (1) Mexican applicants are sufficiently knowledgeable about safety requirements before commencing operations (a prerequisite to being able to comply); and (2) their actual operations in the United

States are conducted in accordance with their application certifications and the conditions of their registrations.

These rules will primarily affect Mexico-domiciled motor carriers who wish to operate in the United States. The amount of information these carriers will have to supply to the FMCSA has been increased, and we estimate that they will spend two additional hours gathering data for the OP-1(MX) and OP-2 application forms. Mexico-domiciled carriers will also have to undergo safety audits and an increased number of CVSA roadside inspections. We presented three scenarios in the regulatory evaluation: a high option, which assumes that there are currently 11,787 Mexican carriers with authority to operate in the United States, a medium scenario, with 9,500 Mexico-domiciled carriers operating in the United States, and a low scenario, with 4,500 carriers. Under all three scenarios we assume that 1,365 new carriers will apply for authority each year, 5 percent more than the 1,300 who have applied on average over the last several years.

A review of the MCMIS census file reveals that the vast majority of Mexican carriers are small, with 75 percent having three or fewer vehicles. Carriers at the 95th percentile carrier had only 15 trucks or buses.

These rules should not have any impact on small U.S.-based motor carriers. These rules apply only to Mexico-domiciled motor carriers who wish to operate in the United States, and primarily involve additional information required from these carriers and oversight of them. U.S.-based motor carriers will not be subject to these rules.

The regulatory evaluation contains a description of the recordkeeping and reporting requirements of these rules. Applicants for both the OP-1(MX) and OP-2 will also have to submit the MCS-150 (census form) and the BOC-3 (designation of agent for service of process form). In addition, Mexican carriers will have to notify the FMCSA of any changes to certain information.

The MCS-150 is approximately two pages long. In addition to requiring basic identifying information, it requires that carriers state the type of operation they run, the number of vehicles and drivers they use, and the types of cargo they haul. The BOC-3 merely requires the name, address and other information for a domestic agent to be contacted for service of agency notices or legal process. The rules also include other modest changes in the OP-1(MX) and OP-2 forms.

None of these forms require any special expertise to complete. Any individual with knowledge about the operations of a carrier should be able to fill out these forms.

The FMCSA is not aware of any other rules which duplicate, overlap with, or conflict with these rules.

The FMCSA did not establish any different requirements or timetables for small entities. As noted above, we do not believe these requirements are onerous. Most covered carriers will be required to spend two extra hours to complete the relevant forms, undergo one or two safety audits (depending on the type of authority they apply for) at four to six hours each, and have their trucks inspected more frequently. The part 385 rule would not achieve its purposes if small entities were exempt. In order to ensure the safety of Mexican carriers, the rule must have a consistent procedure for addressing safety problems. Exempting small motor carriers (which, as was noted above, are the vast majority of Mexican carriers operating in the United States) would defeat the purpose of these rules. It should be noted in passing that small domestic carriers appear to have higher crash and OOS rates than their larger counterparts. If the same situation holds for Mexican carriers, the justification for exempting them from these rules would be even weaker.

The FMCSA did not consolidate or simplify the compliance and reporting requirements for small carriers. Small U.S. carriers already have to comply with the paperwork requirements in part 365. There is no evidence that domestic carriers find these provisions confusing or particularly burdensome. Apropos the part 385 provisions, we believe the requirements are fairly straightforward, and it would not be possible to simplify them. A simplification of any substance would make the rule ineffectual. Given the compelling interest in guaranteeing the safety of Mexico-domiciled carriers operating in the United States, and the fact that the majority of these carriers are small entities, no special changes were made.

The part 385 requirements include performance standards. Mexican carriers will only need to complete a safety improvement plan and face a follow-up review if their performance demonstrates that they are not operating safely, either through a high OOS rate or other problems.

As explained above, the FMCSA can not exempt small carriers from these rules without seriously diminishing the agency's ability to ensure the safe operations of Mexican carriers. The majority of Mexico-domiciled carriers operating in the United States are small; exempting them would have the same impact as not issuing these rules.

These rules will have no impact on domestic carriers, as has been shown in the RFA and the Regulatory Evaluation. Therefore, the agency finds these rules will not have a significant economic impact on a substantial number of small entities.

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