

§385.111

49 CFR Ch. III (10–1–05 Edition)

Conditional rating following a compliance review conducted under this subpart, it will initiate a revocation proceeding in accordance with §385.111 of this subpart. The carrier's provisional operating authority will not be suspended prior to the conclusion of the revocation proceeding.

(d) *Unsatisfactory Rating.* If the FMCSA assigns a Mexico-domiciled carrier an Unsatisfactory rating following a compliance review conducted under this subpart, it will initiate a suspension and revocation proceeding in accordance with §385.111 of this subpart.

§385.111 Suspension and revocation of Mexico-domiciled carrier registration.

(a) If a carrier is assigned an "Unsatisfactory" safety rating following a compliance review conducted under this subpart, or a safety audit conducted under this subpart determines that a carrier does not exercise the basic safety management controls necessary to ensure safe operations, the FMCSA will provide the carrier written notice, as soon as practicable, that its registration will be suspended effective 15 days from the service date of the notice unless the carrier demonstrates, within 10 days of the service date of the notice, that the compliance review or safety audit contains material error.

(b) For purposes of this section, material error is a mistake or series of mistakes that resulted in an erroneous safety rating or an erroneous determination that the carrier does not exercise the necessary basic safety management controls.

(c) If the carrier demonstrates that the compliance review or safety audit contained material error, its registration will not be suspended. If the carrier fails to show a material error in the safety audit, the FMCSA will issue an Order:

(1) Suspending the carrier's provisional operating authority or provisional Certificate of Registration and requiring it to immediately cease all further operations in the United States; and

(2) Notifying the carrier that its provisional operating authority or provisional Certificate of Registration will

be revoked unless it presents evidence of necessary corrective action within 30 days from the service date of the Order.

(d) If a carrier is assigned a "Conditional" rating following a compliance review conducted under this subpart, the provisions of subparagraphs (a) through (c) of this section will apply, except that its provisional registration will not be suspended under paragraph (c)(1) of this section.

(e) If a carrier subject to this subpart fails to provide the necessary documents for a safety audit or compliance review upon reasonable request, or fails to submit evidence of the necessary corrective action as required by §385.105 of this subpart, the FMCSA will provide the carrier with written notice, as soon as practicable, that its registration will be suspended 15 days from the service date of the notice unless it provides all necessary documents or information. This suspension will remain in effect until the necessary documents or information are produced and:

(1) A safety audit determines that the carrier exercises basic safety management controls necessary for safe operations;

(2) The carrier is rated Satisfactory or Conditional after a compliance review; or

(3) The FMCSA determines, following review of the carrier's response to a demand for corrective action under §385.105, that the carrier has taken the necessary corrective action.

(f) If a carrier commits any of the violations specified in §385.105(a) of this subpart after the removal of a suspension issued under this section, the suspension will be automatically reinstated. The FMCSA will issue an Order requiring the carrier to cease further operations in the United States and demonstrate, within 15 days from the service date of the Order, that it did not commit the alleged violation(s). If the carrier fails to demonstrate that it did not commit the violation(s), the FMCSA will issue an Order revoking its provisional operating authority or provisional Certificate of Registration.

(g) If the FMCSA receives credible evidence that a carrier has operated in violation of a suspension order issued under this section, it will issue an

Order requiring the carrier to show cause, within 10 days of the service date of the Order, why its provisional operating authority or provisional Certificate of Registration should not be revoked. If the carrier fails to make the necessary showing, the FMCSA will revoke its registration.

(h) If a Mexico-domiciled motor carrier operates a commercial motor vehicle in violation of a suspension or out-of-service order, it is subject to the penalty provisions in 49 U.S.C. 521(b)(2)(A), not to exceed \$10,000 for each offense.

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

§ 385.113 Administrative review.

(a) A Mexico-domiciled motor carrier may request the FMCSA to conduct an administrative review if it believes the FMCSA has committed an error in assigning a safety rating or suspending or revoking the carrier's provisional operating authority or provisional Certificate of Registration under this subpart.

(b) The carrier must submit its request in writing, in English, to the Associate Administrator for Enforcement, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington DC 20590.

(c) The carrier's request must explain the error it believes the FMCSA committed in assigning the safety rating or suspending or revoking the carrier's provisional operating authority or provisional Certificate of Registration and include any information or documents that support its argument.

(d) The FMCSA will complete its administrative review no later than 10 days after the carrier submits its request for review. The Associate Administrator's decision will constitute the final agency action.

§ 385.115 Reapplying for provisional registration.

(a) A Mexico-domiciled motor carrier whose provisional operating authority or provisional Certificate of Registra-

tion has been revoked may reapply under part 365 or 368 of this subchapter, as appropriate, no sooner than 30 days after the date of revocation.

(b) The Mexico-domiciled motor carrier will be required to initiate the application process from the beginning. The carrier will be required to demonstrate how it has corrected the deficiencies that resulted in revocation of its registration and how it will ensure that it will have adequate basic safety management controls. It will also have to undergo a pre-authorization safety audit if it applies for provisional operating authority under part 365 of this subchapter.

§ 385.117 Duration of safety monitoring system.

(a) Each Mexico-domiciled carrier subject to this subpart will remain in the safety monitoring system for at least 18 months from the date FMCSA issues its provisional Certificate of Registration or provisional operating authority, except as provided in paragraphs (c) and (d) of this section.

(b) If, at the end of this 18-month period, the carrier's most recent safety audit or safety rating was Satisfactory and no additional enforcement or safety improvement actions are pending under this subpart, the Mexico-domiciled carrier's provisional operating authority or provisional Certificate of Registration will become permanent.

(c) If, at the end of this 18-month period, the FMCSA has not been able to conduct a safety audit or compliance review, the carrier will remain in the safety monitoring system until a safety audit or compliance review is conducted. If the results of the safety audit or compliance review are satisfactory, the carrier's provisional operating authority or provisional Certificate of Registration will become permanent.

(d) If, at the end of this 18-month period, the carrier's provisional operating authority or provisional Certificate of Registration is suspended under § 385.111(a) of this subpart, the carrier will remain in the safety monitoring system until the FMCSA either:

(1) Determines that the carrier has taken corrective action; or