




Memorandum

U.S. Department
of Transportation
Federal Motor Carrier
Safety Administration

Subject: ACTION: Conducting the Pre-Authorization Safety Audit

Date: FEB 21 2007

From: Dan Hartman 
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and Program Delivery

Reply to
Attn. of: MC-ESB

To: Assistant Administrator and Chief Safety Officer
Associate Administrator for Field Operations
MC-E Office Directors/Division Chiefs
Office of Chief Counsel, Enforcement and Litigation
Service Center Field Administrators
Division Administrators and State Director
National Enforcement Team
National Training Center

I. PURPOSE

This memorandum provides guidance for conducting the Pre-Authorization Safety Audit (PASA). This memorandum and attachments supersede and replace in its entirety the memorandum "Conducting the Pre-Authorization Safety Audit (MC-ECE-000S-06)" issued on December 22, 2006. The PASA is required for Mexico-domiciled motor carriers seeking authority to operate beyond United States municipalities and commercial zones on the United States-Mexico international border. These motor carriers are frequently referred to as OP-1(MX) or long-haul motor carriers. The primary purpose of the PASA is to ensure that applicant OP-1(MX) motor carriers have in place the basic safety management controls mandated by Congress before beginning operations beyond the commercial border zones in the United States. The PASA also will be used to educate OP-1(MX) motor carriers about applicable Federal Motor Carrier Safety Regulations (FMCSRs).

This memorandum explains how the PASA will be conducted the documentation the motor carrier will need for review by the safety auditor (auditor) during the PASA, and the procedures the auditor will follow while using the Federal Motor Carrier Safety Administration (FMCSA) Compliance Analysis and Performance Review Information (CAPRI) software.

II. BACKGROUND

Section 350 of the Fiscal Year 2002 Department of Transportation Appropriations Act (P.L. 107-87, 115 Stat. 883, 864-868) directed the FMCSA to conduct a PASA on each Mexico-domiciled motor carrier before granting the motor carrier provisional authority to operate beyond United States municipalities and commercial zones on the United States-Mexico international border. Section 350 specifies nine elements FMCSA must include when conducting a PASA on a motor carrier. These nine elements also are set forth in Part 365 of Title 49 of the Code of Federal Regulations (CFR), Subpart E, Appendix A ("Appendix A"). FMCSA further specifies in Appendix A, Section I(d), that five particular elements of the nine elements **must be met. If the FMCSA cannot verify all of the specified elements, or confirm the motor carrier has basic safety management controls in place, the motor carrier will not successfully complete the PASA.** The five elements are identified in this memorandum so that the auditor can, in turn, communicate the requirements to the motor carrier when scheduling the PASA.

III. POLICY

A. General Information

- 1. The PASA process** - The PASA will be conducted in two phases. Prior to beginning the actual PASA, the auditor will contact the motor carrier to schedule the PASA and explain the PASA process and purpose. Additionally during contact and scheduling, the auditor will verify all of the information contained on the motor carrier's application (OP-1 (MX)) and its motor carrier identification report (MCS-150). The first phase of the PASA will be a review of the motor carrier's documentation, records, etc. to verify that the motor carrier has certain specified systems in place. The second phase of the PASA involves a more specific review of the carrier's compliance with the FMCSRs and will be conducted through reviewing the motor carrier's records interviews with motor carrier officials, and use of CAPRI software.
- 2. When to conduct the PASA** - The PASA is conducted on a motor carrier after it has submitted its OP-1 (MX) application to FMCSA and the agency has reviewed the application, and after the motor carrier has returned a properly signed and executed OCE-46 form. The PASA is conducted before a long-haul motor carrier is given provisional authority to operate beyond the United States municipalities and commercial zones. Some motor carriers seeking OP-1 (MX) authority are already operating as OP-2 motor carriers within the United States municipalities and commercial zones along the Mexico border. All motor carriers applying for OP-1 (MX) authority must undergo a complete PASA, even if a motor carrier has had a safety audit and/or compliance review (CR) as an OP-2 motor carrier.
- 3. Motor carriers may have either OP-1 (MX) or OP-2 authority** - Motor carriers will be permitted to maintain either OP-1 (MX) authority or an OP-2 certificate of registration, but not both types of status at the same time. If an OP-2 motor carrier applies for and receives provisional OP-1 (MX) operating authority, the OP-1 (MX) authority will supersede the motor carrier's OP-2 provisional or permanent certificate of registration. Motor carriers that have an OP-2 certificate of registration and subsequently receive OP-1 (MX) authority will maintain the same MX authority number. However the suffix on the motor carrier's USDOT number will change from a "Z" to an "X".

B. Initial Procedures / Contact and Scheduling

1. Obtaining the list of motor carriers - Each FMCSA border State will be provided a list of Mexico-domiciled motor carriers seeking authority to operate beyond the United States municipalities and commercial zones. A list of the motor carriers that will be part of the initial stage of the border opening will be provided by the North American Borders Division via facsimile to each Division Administrator (DA). A compact disc (CD) containing scanned copies of the motor carriers' applications will also be forwarded to the DA. Thereafter, the assignment list of motor carriers needing a PASA will be provided via the Motor Carrier Management Information System (MCMIS). in the same manner as the assignment list of OP-2 motor carriers is currently provided. The DA, or his or her designee, will, in turn, assign each auditor a list of motor carriers to be audited in their MCMIS account.

2. Preparing to contact the motor carrier - The auditor will obtain a copy of the motor carrier's OP-1 (MX) application and motor carrier profile and review them to become familiar with the motor carrier's operation.¹ The auditor will contact his/her supervisor to verify if the motor carrier has returned a properly signed and executed OCE-46 form.

3. Contacting the motor carrier - The auditor should contact the motor carrier via telephone. The auditor should speak with the company's owner or highest ranking official available. The auditor should begin by identifying himself or herself and explaining the purpose of the PASA. The company's owner or highest ranking official should be advised that he or she will need to be present during the PASA to ensure FMCSA obtains accurate information, and to sign for and receive a copy of the completed PASA Part A and Receipt pages.² The auditor should document contact(s) with the motor carrier on Attachment 1 to this memorandum.

If the auditor is unable to reach the motor carrier by telephone and instead the initial contact is via regular mail, email, or facsimile, all correspondence should be addressed to the company's owner or highest ranking official. Correspondence addressed to the motor carrier shall be sent to the motor carrier and its process agent. Copies of written correspondence, including printouts of electronic mail (email) correspondence or facsimiles (including the facsimile log/report showing transmission), should be scanned and uploaded into the agency's Electronic Document Management System (EDMS) as soon as practicable.

4. Explaining the PASA process and purpose to the motor carrier - During the initial contact and scheduling with the motor carrier, the auditor must verify all of the information contained on the motor carrier's OP-1 (MX) application, the motor carrier identification report (MCS-150) and Form BOC-3, if applicable. If the auditor finds any discrepancy in the information, the auditor must advise the motor carrier to submit a new form with corrected information to the FMCSA TransBorder Office (TransBorder Office) before the PASA is conducted. The auditor should then contact the TransBorder Office and notify them that updated information will be submitted by the motor carrier. The TransBorder Office will send a notice to the appropriate DA when the revised information is received.

¹ As the actual PASA may not be conducted for several weeks, the auditor will need to update the profile to ensure it is obtained within seven (7) days of conducting the PASA.

² If the auditor is scheduling the PASA to be conducted within the United States and the motor carrier's official cannot come to the United States, then the audit must be conducted at the motor carrier's principal place of business in Mexico.

The auditor must also advise the motor carrier:

- (1) of the PASA process, including Phases I and II;
- (2) that during Phase I of the PASA, the FMCSA must verify the motor carrier:
 - a) has implemented a controlled substance and alcohol testing program in accordance with 49 CFR Part 40;
 - b) is requiring the drivers it uses, and/or intends to use for operations within the United States, to comply with the hours-of-service (HOS) requirements of 49 CFR Part 395, including record keeping and retention of records;
 - c) has valid proof of financial responsibility;
 - d) is conducting and maintaining records of periodic inspections of commercial motor vehicles (CMV) (power units and/or trailers) it operates, and/or plans to operate in the United States; and
 - e) is requiring the commercial drivers it uses, and/or intends to use for operations within the United States, to meet the qualification requirements of 49 CFR Part 391, including having a valid Licencia Federal de Conductor if applicable;
- (3) that during Phase II of the PASA, FMCSA will be conducting inspections on all CMVs the motor carrier has available and intends to operate in the United States, which have not already received a decal required by section 385.1 03(c). The auditor should ask the motor carrier how many CMVs the carrier plans to have available for inspection when the PASA is conducted; and
- (4) that FMCSA will not grant a motor carrier provisional operating authority unless all elements are verified³ and the FMCSA has determined that the motor carrier is prepared to comply with the FMCSRs and has basic safety management controls in place that function to adequately ensure minimum acceptable compliance with applicable safety requirements. The audit will include evaluating the carrier's compliance with the federal regulations through CAPRI.

The auditor will inform the motor carrier of the documentation the auditor will be reviewing during the first phase (*i.e.*, verification phase) of the PASA. The auditor may also advise the carrier that during Phase I of the PASA the auditor must compile lists of: 1) all CMVs (power units and trailers) the carrier operates, or intends to operate, in the United States; and 2) all drivers currently operating, or intending to operate, CMVs in the United States. If the carrier already has such lists, they would be a useful aide to expediting the PASA review and may be forwarded to the auditor before the PASA is conducted. However, the motor carrier must be advised that it is not required to maintain lists of CMVs and/or drivers, or to provide documentation before the PASA is conducted.

Any documents voluntarily submitted by the motor carrier during contact and scheduling should be scanned into EDMS (in the motor carrier's folder based on the DOT number) with all other

³ A checklist is attached for the auditor's use to facilitate the verification of these five elements (Attachment 3).

contact documentation. The auditor may use documents submitted by the motor carrier during contact and scheduling to become familiar with the carrier's operations. However, even if documents are received from the motor carrier during contact and scheduling, the auditor must review all required documentation during the actual PASA. The PASA may not begin until the auditor has verified the motor carrier has returned a properly signed and executed Form OCE-46, and appropriate notice has been made to SCT. The PASA must be conducted on the date and time scheduled with the carrier and noticed to SCT.

Note that pursuant to the regulations in 49 CFR Part 365, Appendix A, subpart I(b), the motor carrier has 48 hours (excluding weekends and holidays) to make available the required records and documents. Therefore, the auditor must ensure the motor carrier is clearly advised of all the documents the auditor will need to review during the PASA.

The auditor also should ascertain the location of the motor carrier's maintenance facility to ensure any necessary evaluation of the facility is conducted in accordance with Appendix A to Subpart E of Part 365, (I)(c)(7) if the PASA is conducted in Mexico. In some cases, the motor carrier's maintenance facility may be located at a place other than the motor carrier's principal place of business (PPOB).

Element I - Controlled Substance and Alcohol Testing

The auditor should inform the motor carrier that it must have the following information to show compliance with the requirements of Part 40 during the Verification Phase-PASA Phase I. The name, address and telephone number of a laboratory alone is insufficient to show compliance and must, for example, be supplemented with a written policy or contract showing an agreement or contractual relationship between the motor carrier and laboratory, consortium/third-party administrator (C/TPA) or collection site.¹

1. Motor carrier's written policy containing the minimum requirements under sections 382.601(b)(I-II); and
2. Name, address and telephone number of United States or Mexico-based consortium, collection facility, or site, along with a written agreement or contract; and
3. Name, address and telephone number of United States-certified testing laboratory or site, along with a written agreement or contract.⁴
4. With respect to the written agreements and contracts referenced above:
 - a. With a C/TPA the letter or contract should have an account number or other information identifying the motor carrier and it should be verified by calling the C/TPA; or
 - b. With a collection site, the letter or contract should be verified by calling the site.
5. If the motor carrier is already operating in the United States municipalities and commercial zones along the United States-Mexico international border, the motor carrier

⁴ See list of authorized laboratories on the dot.gov website under Business Services, then Drug and Alcohol, then Drug Testing Laboratory, then Current List of Certified Laboratories

must have copies of test results conducted for controlled substance and alcohol use. If test results are submitted, the auditor should verify the test results by telephone with the appropriate site - *e.g.*, contact collection site, laboratory, C/TPA or Medical Review Officer.

6. If the motor carrier is administering its own controlled substance and alcohol testing, the auditor must ensure that testing is being performed in accordance with Part 40 requirements.

Element II - Hours-of-Service Rules

The auditor should inform the motor carrier that during the Verification Phase-PASA Phase I, it will need to provide information describing the carrier's system of compliance with the HOS requirements, including recordkeeping and retention, and how the carrier will ensure its drivers comply with HOS requirements. The information may be provided to the auditor during an oral interview and/or by written documentation describing the motor carrier's system (policy or procedures) for complying with the HOS requirements. A board where drivers sign in and out is not sufficient. In addition to the information describing the motor carrier's system, any of the following documentation is acceptable:

- a. Time cards used or to be used by the motor carrier (if applicable to operation); or
- b. Print-out from log tracking software used or to be used; or
- c. Record of duty status (RODS) used or to be used.

In addition, the auditor should inform the motor carrier that during the second phase of the PASA, the auditor will be asking questions about the management system the carrier uses, or will use, to verify driver RODs. If the carrier is currently operating in the United States, the auditor should inform the carrier that during the second phase of the PASA it will need to provide copies of supporting documents it uses to verify its drivers' RODS and ensure its drivers' compliance with HOS requirements.

Element III - Insurance

The auditor should inform the motor carrier that during the Verification Phase-PASA Phase I, the auditor must verify the motor carrier has the adequate level of financial responsibility before conducting the second phase of the PASA. For this purpose, an insurance identification card, a binder or policy from an approved United States-based insurance company, with the insurance company name, address, telephone number and policy number showing the carrier to have an adequate level of financial responsibility in place upon the motor carrier being granted provisional operating authority, is acceptable. The auditor should verify the insurance information by contacting the insurance company provided by the motor carrier.

The motor carrier's insurance company must file Form BMC-91 or BMC-91X for Mexico-domiciled motor carriers seeking authority to operate within the United States after the motor carrier satisfactorily completes the entire PASA and notice of the motor carrier's application for provisional authority is posted in the USDOT/FMCSA Register. The agency's Commercial Enforcement Division will verify the appropriate insurance company filing has been submitted

and accepted before the motor carrier will be granted provisional authority to operate in the United States.

Element IV - Periodic Vehicle Inspections

The auditor should inform the motor carrier that during the Verification Phase-PASA Phase I the auditor will evaluate the carrier's safety inspection, maintenance, and repair facilities (if the PASA is conducted at the carrier's principal place of business (PPOS) and the carrier's inspection, maintenance, and repair facilities are on-site) or management systems.

The auditor should inform the motor carrier that during the first phase of the PASA the auditor will need to identify the CMVs (power units and/or trailers) the motor carrier uses, or intends to use, in the United States. The auditor shall compile a list of the CMVs from the information provided by the carrier, including any available list the carrier may have of such CMVs. The auditor will review at least one of the following documents for each identified CMV:

- a. Periodic inspection report(s); or
- b. Federal or State reports with Commercial Vehicle Safety Alliance (CVSA) decal information; or
- c. Inspection reports from the Secretaria de Comunicaciones y Transportes (SCT) - Mexican Ministry of Communications and Transport.

Element V - Drivers' Qualifications

Mexico ensures drivers are medically qualified before issuing a Licencia Federal de Conductor. The auditor should inform the motor carrier that during the Verification Phase-PASA Phase I, the auditor will do all of the following:

1. Determine Commercial Driver License (COL) and Licencia de Federal de Conductor requirements for type and size of vehicles to be used in United States⁵;
2. Identify the motor carrier's drivers currently operating in the United States municipalities and commercial zones on the United States-Mexico international border and those intending to operate beyond the municipalities and commercial zones on the United States-Mexico border. During the first phase of the PASA the auditor shall compile a list of drivers (to include driver's name, address, date of birth, and driver's license number) from information provided by the carrier, including any available list the carrier may have of such drivers;
3. Verify the qualifications of each of the drivers, and the type, status and validity of the license (CDL or Licencia Federal de Conductor) for each of these drivers.⁶ If the motor carrier maintains copies of licenses for its drivers, the auditor should obtain copies of these documents; and

⁵See also Mexican Licencia Federal Enforcement Policy dated October 24, 2001, and Mexican Licencia Federal de Conductor Enforcement Policy Clarification dated November 25, 2006 for guidance.

⁶Note: The November 25, 2006 Mexican Licencia Federal de Conductor Enforcement Policy Clarification sets forth guidance on the requirements and exemption verification process for drivers of CMVs with a GVWR less than 26,001 pounds but having a cargo capacity greater than 8,000 pounds or passenger vehicles with a seating capacity of nine or more passengers, excluding the driver.

4. Verify driver information through the Commercial Driver's License Information System (CDLIS) report for these drivers. If any driver required to have a license does not have a valid United States CDL or Licencia Federal de Conductor, the auditor must advise the motor carrier that the driver cannot be used for operations in the United States.

5. **Scheduling the PASA** - Once the auditor has verified the motor carrier has returned a properly signed and executed Form OCE-46, and the motor carrier has been advised of the documents that will be reviewed during the Verification Phase-PASA Phase I and fully understands the PASA process, the auditor should schedule the PASA. The PASA must be scheduled at least 15 days in advance of the actual date and time of the PASA.

The auditor will notify his/her supervisor once the PASA has been scheduled and confirmed with the motor carrier. The DA, or his or her designee, must notify the following Mexican government officials, or their successors to these positions, of the scheduled PASA at least 15 days before the audit is scheduled to occur;

- (i) Ingeniero (Ing.) Gerardo Michel, Director de Supervision del Autotransporte Federal - Director of Supervision in charge of Inspections and Field Staff, Secretaria de Comunicaciones y Transportes (SCT) - Mexican Ministry of Communications and Transport and
- (ii) Ing. Carlos A. Gonzalez Narvaez, Director General de Autotransporte Federal - Director General of Federal Motor Carriers, Secretaria de Comunicaciones y Transportes - Mexican Ministry of Communications and Transport.

The notice should be sent via email to gmichel@sct.gob.mx and cgonzale@sct.gob.mx and must include the:⁷

- a. name of the motor carrier;
- b. name of company representative to meet;
- c. address information;
- d. time and date of the audit; and
- e. if known at the time of the scheduling, the number of CMVs (power units and trailers) the carrier plans to have available for inspection during the PASA.

The auditor will schedule the PASA to be conducted at the motor carrier's PPOS or a public place mutually agreed to by both the auditor and the motor carrier after advising the motor carrier of these requirements. Auditors must note in CAPRI, Part C the location of the audit if different than the motor carrier's PPOS so that the agency can track where audits are conducted to ensure compliance with the congressional mandate.

NOTE: The auditor should make every effort to conduct the PASA at the Mexico-domiciled motor carrier's PPOB.

6. **Contact Procedure** - It may be difficult to locate motor carriers from the information currently found in MCMIS or the motor carrier's OP-1 (MX) application. In addition to the

⁷ Notification to Mexican government officials should be made using the form in Attachment 2.

sources provided in the electronic Field Operations Training Manual (eFOTM), the following suggestions may be helpful in locating OP-1(MX) motor carriers:

- Contact process agent assigned by the motor carrier in the OP-1 (MX) application.
- Contact the TransBorder Office at (619) 710-8400 to determine whether additional telephone numbers exist.
- Contact Ing. Gerardo Michel at the SCT via email at gmichel@sct.gob.mx or by telephone at 011-52-555-68-41514.
- Contact state or federal inspectors located in the port of entry inspection area nearest to the motor carrier, and/or ports of entry repeatedly accessed by the motor carrier, as the inspectors may be familiar with the motor carrier, its vehicles, and/or drivers.

7. Obtaining the company profile within 7 days of conducting the PASA - A second company profile should be obtained to ensure the auditor has the most recent information available. Use the information in the profile to select drivers and CMVs (power units and trailers) for inspection during the PASA. The profile should also be compared to the lists compiled by the auditor of CMVs and drivers the motor carrier uses, and/or intends to use in the United States during the first phase of the PASA. If the motor carrier has no inspection/crash history information on its profile, or has not operated in the United States, a note should be made in Part C of the PASA; the auditor may proceed with the PASA process.

C. Conducting the Verification Phase of the PASA - Phase 1.

Auditors should follow the safety audit procedures contained in the agency's eFOTM unless directed to do otherwise in this memorandum, including attachments.

1. Commencing the verification phase of the PASA - At the discretion of SCT, the auditor may be accompanied by SCT personnel when conducting the first and/or second Phases of the PASA. The auditor should take a copy of the motor carrier's OP-1 (MX) application to use during the PASA to verify all information is accurate. The auditor should also verify the carrier's process agent(s) information. If the auditor discovers that the data in MCMIS is inconsistent with the information on the application, the motor carrier should be directed to contact the TransBorder Office at (619) 710-8400 to correct the data. If the TransBorder Office cannot be reached at the time of the PASA, the auditor should use the data currently in MCMIS and follow-up after the PASA is completed to ensure the data is corrected.

The auditor should review the documents listed above in Section III.B. 4 of this memorandum to verify the motor carrier has satisfied each of the five elements described in 49 CFR Part 365, Subpart E, Appendix A, Section I(d). If all five elements are not satisfied - *i.e.*, controlled substance and alcohol testing program, HOS rules, financial responsibility, periodic vehicle inspections or drivers' qualifications - the auditor will continue to educate the motor carrier on how to comply with the FMCSRs utilizing the questions from the CAPRI.

If the motor carrier has not satisfied all of the five elements, the auditor must notify his/her supervisor as soon as practicable that the motor carrier did not successfully complete the PASA. The supervisor will be responsible for notifying SCT as soon as practicable that the motor carrier did not successfully complete the PASA. The auditor should document the review and all contacts made while verifying compliance with the five elements. The documentation should include at a minimum: the date and time of contact(s); company name; telephone number(s);

name of point of contact; response from point of contact; and policy or contract number(s). The auditor should also maintain notes of any missing documentation, failed elements and copies of appropriate records documenting deficiencies. All documentation should be scanned and uploaded into EDMS as soon as practicable.

2. Special Procedures for the PASA

Failure to keep an appointment - If a motor carrier fails to keep a confirmed appointment, the auditor should contact his/her immediate supervisor as soon as practicable and advise the supervisor of the situation. The motor carrier may be allowed to reschedule if the motor carrier contacts FMCSA within one week with a legitimate reason why its failure to keep the appointment was beyond its control. The supervisor must notify Ing. Gerardo Michel and Ing. Carlos A. Gonzalez Narvaez that the motor carrier failed to keep its appointment. The auditor should also provide Ing. Gerardo Michel and Ing. Carlos A. Gonzalez Narvaez notice of the rescheduled audit 15 days before the date of the audit, if the PASA is subsequently rescheduled in accordance with the guidance in this memorandum. If the PASA is rescheduled at a later date, the auditor should ensure that any documentation the motor carrier may have submitted during contact and scheduling of the PASA is still current correct and/or valid.

Refusal to submit to a PASA - The auditor should make at least three reasonable attempts to locate the motor carrier before discontinuing attempts to schedule the PASA. The attempts should be varied (via cellular telephone, work telephone, email, facsimile, process agent, certified international mail) and documented. If the motor carrier cannot be contacted to schedule the PASA after the three reasonable attempts are made, the auditor must note the attempts in MCMIS the same way attempts are documented and entered into MCMIS for new entrant motor carriers. MCMIS will then generate a letter advising the motor carrier that its application will be dismissed. The documentation of the contact attempts must also be uploaded into EDMS.

Vehicle Inspections - Auditors must conduct a North American Standard Level V inspection on all CMVs available that have been identified as long-haul vehicles, which have not already received a decal required by section 385.103(c). Motor carriers must be informed that vehicles operating within the United States require the suffix X after their USDOT number if the motor carrier is granted OP-1(MX) authority. If the motor carrier is currently operating in the municipalities and commercial zones, the auditor should verify that the motor carrier is using the Z suffix after the USDOT number. Further, the auditor should explain that if the motor carrier is granted OP-1(MX) authority, the markings will need to be changed to reflect the X suffix.

D. Conducting CAPRI Phase of the PASA - Phase II

1. Using CAPRI software - If the motor carrier fully satisfies all of the five elements listed above, the auditor will proceed to the second phase of the PASA by reviewing the motor carrier's performance data and regulatory compliance, and recording the results using the CAPRI software. The auditor should utilize Attachment 6 of this memorandum for guidance to effectively answer the CAPRI PASA questions. Through this process, the auditor will also interview motor carrier officials to review the motor carrier's safety management controls and evaluate any available written safety oversight policies and practices, as required by 49 CFR Part 365 Appendix A, Subpart E. As noted earlier, the auditor may be accompanied by SCT personnel.

At no time will a PASA be converted to a compliance review (CR) based on "initiating violations" identified in the eFOTM question and answer sections. If any "initiating violation" is discovered, the auditor will complete the PASA with no indication to the motor carrier that an "initiating violation" was detected. Copies of records utilized to identify the violation(s) and documentation of examples of the initiating violation(s) **must** be made. A certified safety investigator will be assigned to conduct a follow up compliance review. Such compliance review will be conducted in accordance with established FMCSA policy and eFOTM procedures.

At no time will the auditor inform the motor carrier whether they passed or failed the PASA. Official notification will be made to the carrier from FMCSA-Headquarters.

2. Completing Part A of the Audit

Mileage - For motor carriers that have not begun operations, auditors should enter zero for mileage. For motor carriers that currently operate in the commercial zone, auditors should follow eFOTM guidelines.

Gross Revenue - For motor carriers that have not begun operations, auditors should enter zero.

Equipment - Auditors should enter data in Part A for the CMVs (power units and trailers) the motor carrier intends to use in the United States with the exception of trip-leased vehicles.⁸ For trip-leased vehicles, auditors should enter an average number of trip-leased vehicles per month the motor carrier intends to operate in the United States.

Drivers - Auditors should list the number of drivers the motor carrier intends to use to operate CMVs in the United States.

Crashes - Auditors should enter the number of crashes that occurred involving CMVs operated by the motor carrier in the United States, or on a trip to or from the United States.

Vehicle Inspections - Auditors should enter the number of vehicles (tractors and/or trailers) inspected and the number of vehicles placed out of service while operated by the motor carrier in the United States, or on a trip to or from the United States. Additionally, if vehicle inspections are conducted during the PASA, the auditor must enter the number of vehicles (tractors and/or trailers) inspected and the number of vehicles for which out of service violations are discovered.

Part 382 - Controlled Substances and Alcohol Use and Testing

The motor carrier must provide proof that it has implemented or will implement a drug and alcohol program. If the motor carrier provides written documentation evidencing compliance, *e.g.*, a copy of a contract with a C/TPA, and this information cannot be confirmed by contacting the appropriate drug and alcohol laboratory, site, consortium, etc., due solely to communication or system unavailability (*i.e.*, no telephone, facsimile or computer availability), advise the motor carrier that it will be notified at a later date if any deficiencies are discovered. The auditor may continue with the PASA.

⁸ Auditors should enter the data for all the vehicles the motor carrier has in Part C.

- Identify the drivers subject to Part 382 by reviewing the list of the motor carrier's drivers currently operating, or intending to operate, CMVs in the United States compiled during Phase I of the PASA.
- Verify all drivers that will be operating in the United States subject to Part 382 are currently enrolled in the company's program.
- Make copies of documents presented to show compliance (*i.e.*, signed contract with consortium, motor carrier drug and alcohol policy or program) to be scanned to EDMS.

Part 383 - Commercial Drivers License

Identify drivers subject to Part 383 by reviewing the list of the motor carrier's drivers currently operating, or intending to operate, CMVs in the United States compiled during Phase I of the PASA. Pay particular attention to any new information that was not provided during Phase I.

Review the motor carrier's management system for ensuring that each of its drivers holds a valid and appropriate license. Information maintained by the motor carrier may include a copy of the license, or relevant data such as license number for each driver.

The auditor must determine that each driver holds a valid and appropriate license to operate CMVs in the United States. If the carrier maintains a copy of the CDL or Licencia Federal de Conductor for its drivers, the auditor should obtain copies, and scan into EDMS.

The auditor shall verify the validity of the license information provided by the carrier for each driver. If the auditor is unable to verify the drivers' licenses at the time of the PASA due to communications errors or systems unavailability, the auditor should advise the motor carrier's representative that he/she will be notified at a later date if any deficiencies are noted. The auditor may continue with the PASA.

Part 387 - Financial Responsibility

The motor carrier must provide a copy of a valid insurance policy, binder or other documentation that demonstrates proof of insurance, from an approved United States-based insurance company, currently in place or to be in place once the motor carrier is granted provisional operating authority. If the motor carrier provides a copy of a valid policy but the auditor is unable to contact the insurance company to confirm insurance information due to communication errors or system unavailability, the auditor should instruct the motor carrier's representative that he or she will be notified at a later date if any deficiencies are noted. Auditors should contact the appropriate State Department of Insurance or Insurance Board to determine if the insurance company is an approved insurance company.

For motor carriers currently operating within the commercial zones, the auditor should follow current eFOTM guidance when reviewing the motor carriers' operations in the United States. The auditor should verify the motor carrier had adequate levels of financial responsibility in effect, and proof of such financial responsibility, at the time of transportation.

A copy of the insurance policy, binder, or documentation must be scanned into EDMS. The auditor may continue with the PASA. Motor carriers applying for OP-1 (MX) operating authority are not required to have a copy of form MCS-90.

Part 390 - General Applicability and Definitions

Advise the motor carrier that any CMV (power unit) intended for use in the United States must be properly marked with "X" at the end of the assigned USDOT number after the motor carrier is granted provisional operating authority. Motor carriers that are currently operating in the commercial border zone under a certificate of registration should continue to mark their vehicles with the "Z" suffix to the USDOT number until the motor carrier is granted provisional operating authority. The auditor must review documentation the motor carrier has available on crashes that occurred in the United States or on a trip to or from the United States. If the motor carrier has documentation of crashes that occurred in Mexico, the auditor should note the crash information in Part C.

Part 391 - Qualification of Drivers

Identify all drivers subject to Part 391 by reviewing the list of the carrier's drivers currently operating, or intending to operate, CMVs in the United States compiled during Phase I of the PASA. The list compiled by the auditor should include: driver's name, license number, state of issuance, and date of birth. The list should distinguish (i) drivers that will be operating vehicles less than 10,001 pounds Gross Vehicle Weight Rating (GVWR), (ii) drivers that will be operating vehicles between 10,001 pounds and 26,000 pounds GVWR and (iii) drivers that will be operating vehicles 26,001 pounds GVWR and greater. Retain a copy of the list to be scanned into EDMS. The auditor should review driver qualification files only for drivers who operate, or will operate, in the United States vehicles in excess of 10,001 pounds GVWR.

A driver qualification file must be reviewed for every driver that the motor carrier intends to use to operate CMVs in the United States. (*E.g.*, if the motor carrier intends to use 20 drivers to operate CMVs in the United States, the auditor must review a driver file for each of the 20 drivers.)

The auditor should ensure the motor carrier driver files are maintained in accordance with Section 391.51 with special attention given to the following items:

- The minimum 21 years old age requirement.
- Check CDLIS for the driver's license history. CDLIS will reflect whether the driver has a valid CDL in the United States. If the driver has a Licencia Federal de Conductor, CDLIS will show the status of the license and convictions of violations committed in the United States.
- Medical Examiner's Certificate. For drivers with a Licencia Federal de Conductor a copy in the driver qualification file of the Licencia Federal to demonstrate proof of a medical examination or a copy of the medical examination report would satisfy this requirement. Medical examination reports from SCT are not required.

Part 392 - Driving of Commercial Motor Vehicles

If the auditor discovers any safety related violations for drivers that operate, or will be operating CMVs in the United States, review Part 392 procedures with the motor carrier thoroughly, paying special attention to the safety violation(s) discovered, and ensure the motor carrier understands the importance of compliance with this part. Follow eFOTM guidance.

Part 393 - Parts and Accessories

As noted previously, the auditor must conduct a North American Standard Level V inspection on all CMVs (power units and trailers) available that have been identified as long-haul vehicles and have not already received a decal required by section 385.103(c). The auditor should review

the list compiled during Phase I of the PASA of all CMVs (power units and trailers) that the motor carrier is currently operating or intends to operate in the United States. The auditor should ensure the compiled list includes the make, year, model, vehicle identification number (VIN), license plate number and GVWR. The compiled list should be scanned to EDMS.

Part 395 - Drivers Hours of Service

The review of HOS for motor carriers that have not begun operations into the United States requires the motor carrier to demonstrate compliance by providing a copy of a log book or RODS to be used by all drivers it intends to use to operate a CMV beyond the municipalities and commercial zones, and/or a company policy or other information demonstrating adoption of this requirement, or training material provided to the drivers. If a motor carrier is currently operating in the commercial zone and intends to use some or all of its drivers to operate beyond the commercial zone, review 30 days of RODS for each of the drivers it intends to use to ensure compliance with section 395.8(d). In addition:

- Identify all drivers subject to Part 395 by reviewing the list of the motor carrier's drivers currently operating, or intending to operate, CMVs in the United States compiled during Phase I of the PASA;
- Make copies of documents submitted by the carrier to show compliance with HOS (*i.e.*, sample of log book, time card, training material, etc.);
- Review available supporting documents with the motor carrier. If the motor carrier has not begun operations, instruct the motor carrier on supporting documents that should be retained; and
- Scan 8 days of RODS or time cards for one driver into EDMS, demonstrating compliance with the HOS.

Part 396 -Inspection, Repair, and Maintenance

Use the list compiled for Part 393 above of all CMVs to identify CMVs subject to Part 396. The auditor shall review maintenance files for every CMV with a GVWR of 10,001 pounds or greater that will be operating within the United States. A copy of one complete maintenance file must be scanned into EDMS. If the motor carrier has not yet operated in the United States (*i.e.*, not an existing commercial zone motor carrier), the auditor should review a copy of a Driver Vehicle Inspection Report (DVIR) that the motor carrier intends to have its drivers use and/or a company policy demonstrating adoption of this requirement, and training materials provided to the drivers. Make copies of these materials and scan into EDMS.

As noted previously, all CMVs (power units and trailers) available at the motor carrier's facility that are currently operating or intended to be operated in the United States must be inspected at the time of the PASA, unless the vehicle has a current decal required by section 385.103(c). The auditor should conduct a Level V inspection using the latest version of ASPEN software. For safety reasons, it is recommended two auditors conduct the Level V inspection. At the discretion of SCT, the auditor may also be accompanied by an SCT inspector.

If an out-of-service (OOS) violation is observed during the vehicle inspections, advise the motor carrier that the vehicle cannot be operated in the United States until the necessary repairs are made and they comply with the requirements of section 365.507(e)(3).

The auditor should leave a copy of the signed inspection report with the motor carrier. The auditor should not upload the ASPEN inspection reports into SAFETYNET, but rather should scan the reports into EDMS.

Advisement of Obligation to Comply with Statutes and Regulations

The auditor must review with the motor carrier Attachment 4 (Advisement of Obligation to Comply with Statutes and Regulations). This document provides an additional notice to the motor carrier of its continuing and ongoing duty and responsibility to comply with applicable statutes and regulations including the Federal Motor Carrier Safety Regulations, and the following specific driver and vehicle obligations when granted provisional operating authority:

- To use only qualified drivers, including the qualification requirement that drivers be proficient in English in accordance with Part 391.11;
- To use only vehicles meeting FMVSS requirements; and
- To comply with pertinent statutes and regulatory requirements of the state, local and tribal jurisdictions in which the carrier will be operating, including size and weight requirements.

After the auditor reviews the advisement with the motor carrier, the auditor should request the motor carrier's official sign the document where indicated acknowledging receipt of the document. The motor carrier's official is not required to sign the Advisement; however, the auditor must note in Part C that the auditor reviewed the advisement with the motor carrier's representative(s) and identify the representative(s) present during the review of the advisement. The auditor should also note on the advisement if the motor carrier official refused to sign. The auditor should make a copy of the advisement (signed or unsigned) and leave a copy with the motor carrier's official. The advisement should be scanned and uploaded to EDMS.

Protest of Application for Granting Provisional Operating Authority

Attachment 5 to this memorandum briefly illustrates the process followed if a protest is received to an OP-1 (MX) application. The auditor should provide the motor carrier a copy of Attachment 5. The auditor should also explain to the motor carrier that if it successfully completes the PASA, FMCSA will publish a summary of its application as a preliminary grant of authority in the USDOT/FMCSA Register to give notice to the public as required in 49 C.F.R. § 365.109(b). Interested persons have 10 days from the date of FMCSA Register publication to file a protest opposing the application. If any protests are filed, the motor carrier may file a reply statement within 20 days from the date of publication of the preliminary grant of authority. The auditor must document in Part C that the carrier was provided with a copy of Attachment 5, and the auditor discussed the Protested Application Process with the motor carrier.

E. Concluding the PASA

1. Irrespective of whether it appears the motor carrier will or will not successfully complete the PASA, the auditor must complete all required data fields in Part A upon completion of each PASA, and print the completed Part A and Receipt page. The auditor must annotate on the Receipt page that the additional documents "Advisement of Obligation to Comply with Statutes and Regulations" (Attachment 4) and "Protested Application Process" (Attachment 5) were provided and should include these two documents in the total number of documents received by the motor carrier. The auditor should give the

motor carrier a copy of the Part A and Receipt page only after the motor carrier's owner or highest ranking official has signed the Receipt page. If the motor carrier's official refuses to sign the Receipt page, the auditor should note the refusal, and leave only the "Advisement of Obligation to Comply with Statutes and Regulations" and the "Protested Application Process" documents with the motor carrier. The auditor will then send to the motor carrier through its process agent by certified mail a copy of the Part A and Receipt page noting the refusal to sign, along with the Part B and Recommendations (see paragraph 2).

2. The auditor should not print out a copy of the Part B, the Recommendations and the "Summary Scoring Report" found in the "Supplemental Reports," and the motor carrier should not be advised of the proposed results of the PASA. The auditor should tell the motor carrier that it will be notified of the results of the PASA in writing after the information is reviewed. Once the auditor returns to his/her office, he/she must print the Part B and Recommendations, to coincide with the upload, quality assurance and approval by the auditor's supervisor. The auditor will send a copy of the audit to the motor carrier and the motor carrier's process agent by certified mail or via commercial express mail service as soon as possible after the audit is approved by the supervisor.

NOTE: A copy of the PASA Part A and Receipt page should not be left with the motor carrier if the motor carrier refuses to sign, or if the PASA is not completed at the motor carrier's PPOB. This fact should be noted in CAPRI Part C, and the motor carrier should be informed that it will receive a copy of the report through its process agent.

3. Completion of Part C

If the auditor cannot verify all the information required and provided by the motor carrier (*e.g.*, insurance company confirmation of policy, CDL information, etc.) at the time of the audit, the auditor will complete the audit to the extent possible, and notify the motor carrier that successful completion of the audit is contingent upon verification of information provided.

The auditor must verify the information provided when returning to his or her office by calling the insurance company, accessing CDLIS, etc. If the auditor cannot validate any of the information submitted by the motor carrier, the motor carrier will be informed by FMCSA-Headquarters it has not successfully completed the PASA and will need to reapply if it chooses to do so.

OP-1 (MX) applicants (long-haul motor carriers) will not be allowed to submit corrective actions for deficiencies noted during the PASA. OP-1(MX) applicants that fail the PASA will be required to reapply and pay any necessary fees if they choose to do so. OP-1(MX) applicants that fail the PASA and are also OP-2 motor carriers may continue to operate as OP-2 motor carriers.

4. Additional information to include in Part C.

Answers to the following questions should be noted in Part C:

- How many years has the motor carrier been in operation?

- Is the motor carrier currently operating within the United States municipalities and commercial zones?
- When did the motor carrier receive a certificate of registration to operate within the United States municipalities and commercial zones?
- If the motor carrier is currently operating within the United States commercial zone, discuss any prior expedited action letters, Safety Audit results, CR results, roadside inspections, deficiencies/violations observed and corrective actions taken by the motor carrier.
- If the motor carrier obtains long-haul operating authority, does the motor carrier have plans to operate within the United States municipalities and commercial zones as well?
- Does the motor carrier have a parent company in the United States or any affiliation or association with a motor carrier operating in the United States?
- How many CMVs (power units and trailers) does the motor carrier operate within Mexico?
- Was the Advisement of Obligation to Comply with Statutes and Regulations discussed with the motor carrier's officials and provided to motor carrier?
- Who were the motor carrier officials present during the discussion of the advisement?
- Was the Protested Application Process discussed and provided to the motor carrier?

F. Uploading the PASA

To ensure expeditious processing of the motor carrier's application for provisional operating authority, a PASA should be uploaded within seven days of completion, the same as a New Entrant Safety Audit. After the auditor's supervisor and new entrant specialist have reviewed and approved the PASA, notification of the results of the PASA be given to Ing. Gerardo Michel within 15 days. The notice should be sent via email to gmichel@sct.gob.mx and Ing. Carlos A. Gonzalez Narvaez at cgonzale@sct.gob.mx.

If you any questions concerning this policy memorandum, contact the North American Borders Division at (202) 366-9579.