

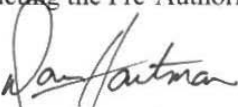


Memorandum

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 
Associate Administrator for Enforcement
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-0005-06)" 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 385.103(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).