

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. Motor carrier's written policy containing the minimum requirements under sections 382.601(b)(1-11); 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 (PPOB) 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 Secretaría 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 (CDL) 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

⁵ See 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.

⁶ Note: 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) Ingéniero (Ing.) Gerardo Michel, Director de Supervisión del Autotransporte Federal - Director of Supervision in charge of Inspections and Field Staff, Secretaría de Comunicaciones y Transportes (SCT) - Mexican Ministry of Communications and Transport and
- (ii) Ing. Carlos A. González Narváez, Director General de Autotransporte Federal – Director General of Federal Motor Carriers, Secretaría 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 PPOB 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 PPOB 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 I.

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. González Narváez that the motor carrier failed to keep its appointment. The auditor should also provide Ing. Gerardo Michel and Ing. Carlos A. González Narváez 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.

