
Office of Inspector General

Audit Report

INCREASED PARTICIPATION AND IMPROVED OVERSIGHT MECHANISMS WOULD BENEFIT THE NAFTA PILOT PROGRAM

Federal Motor Carrier Safety Administration

Report Number: MH-2012-169

Date Issued: August 16, 2012






Memorandum

U.S. Department of
Transportation

Office of the Secretary
of Transportation
Office of Inspector General

Subject: **ACTION:** Increased Participation and Improved
Oversight Mechanisms Would Benefit the NAFTA
Pilot Program
Federal Motor Carrier Safety Administration
Report No. MH-2012-169

Date: August 16, 2012

From: Joseph W. Comé 
Assistant Inspector General for
Highway and Transit Audits

Reply to
Attn. of: JA-40

To: Federal Motor Carrier Safety Administrator

On July 8, 2011, the Federal Motor Carrier Safety Administration (FMCSA) published a Federal Register notice¹ authorizing Mexico-domiciled motor carriers to transport cargo under a pilot program beyond the commercial zones² and throughout the United States (long-haul operations). The pilot program is intended to implement provisions of the 1992 North American Free Trade Agreement (NAFTA). We are required by law³ to review FMCSA's conduct of cross-border trucking pilot programs and issue initial, interim, and final audit reports to Congress and the Secretary of Transportation. We issued an initial report⁴ on August 19, 2011, and on October 14, 2011, FMCSA formally initiated the pilot program by granting long-haul operating authority to the first participant.

Our objectives for this interim audit were to determine whether (1) the pilot program consists of an adequate and representative sample of Mexico-domiciled carriers that are likely to engage in cross-border operations beyond the United States municipalities and commercial zones on the United States-Mexico border, (2) Federal and State monitoring and enforcement activities are sufficient to

¹ Pilot Program on the North American Free Trade Agreement (NAFTA) Long-Haul Trucking Provisions, Docket No. FMCSA-2011-0097, 76 Fed. Reg. 40420 (July 8, 2011).

² Commercial zones generally extend from 3 miles to 25 miles north of United States border municipalities in California, New Mexico, and Texas (or 75 miles in Arizona).

³ Pub.L. No. 110-28 (2007).

⁴ OIG Report Number MH-2011-161, "FMCSA Generally Complies With Statutory Requirements, but Actions Are Needed Prior To Initiating Its NAFTA Cross-Border Trucking Pilot Program," August 19, 2011. OIG reports are available on our Web site at <http://www.oig.dot.gov>.

ensure that participants in the pilot program are complying with all applicable laws and regulations, and (3) the Department has established sufficient mechanisms to determine whether the pilot program is adversely affecting motor carrier safety.

To conduct our audit work, we reviewed pilot program documents, interviewed FMCSA personnel, monitored pilot program participation levels, directly observed three pre-authorization safety audits (PASA)⁵ conducted by FMCSA in the United States and Mexico, and analyzed data generated from electronic monitoring devices installed on participating trucks. We conducted this audit from October 2011 through May 2012 in accordance with generally accepted Government auditing standards. We also updated our report to reflect additional program participation activity that occurred from levels we reported in our May 2012 draft report. Exhibit A details our objectives, scope, and methodology, and exhibit B identifies the organizations we visited or contacted.

RESULTS IN BRIEF

The low participation in the pilot program puts FMCSA at risk of not meeting its goals for providing an adequate and representative sample of Mexico-domiciled carriers and inspections necessary to assess the impact on motor carrier safety. FMCSA estimates that at least 46 carriers will be needed to obtain a target of 4,100 inspections within 3 years to provide a statistically valid analysis of program participants' safety performance.⁶ FMCSA has approved long-haul operating authority for four carriers and completed 89 of the 4,100 inspections, 52 of which extended beyond the commercial zone. Although the 30 applications FMCSA received indicates that participation may increase, we cannot determine at this time whether increased participation will be sufficient to provide an adequate and representative sample of carriers and inspections.

FMCSA's oversight mechanisms did not ensure full compliance with pilot program requirements; and at the time of our review, it was still developing certain monitoring mechanisms. Specifically, FMCSA staff did not comply with new English language proficiency requirements for testing drivers on traffic and road signs during two of three PASAs we observed.⁷ FMCSA's quality assurance personnel approved PASA results for two of three Mexico-domiciled carriers before verifying that required driver's license testing had been completed, and made errors in determining whether one potential carrier complied with Federal drug and alcohol testing regulations. Additionally, FMCSA's monitoring plan did not include periodic reviews of electronic monitoring data quality and reporting

⁵ A PASA is an FMCSA review in which the motor carrier must demonstrate that it complies with requirements for drug and alcohol testing, hours-of-service, insurance, vehicle maintenance and inspections, and qualified drivers.

⁶ According to FMCSA, statistically valid results would detect differences in violation rates between United States and Mexican carriers of 2 percentage points or greater with 90-percent confidence.

⁷ FMCSA completed a total of five PASAs during our audit field work.

accuracy as the pilot program moves forward and participation increases. Finally, FMCSA has delayed development of a mechanism for detecting cabotage violations.⁸

At the time of our review, FMCSA did not have sufficient data to determine whether the pilot program poses risks to safety. Additionally, the current low participation rate does not allow us to make reliable statistical projections regarding safety attributes. We will continue to monitor the progress of the program during the final stage of our audit series to determine whether sufficient data becomes available to make reliable conclusions on the potential risks to safety that the pilot program poses.

We are making recommendations to enhance the effectiveness of FMCSA's monitoring and enforcement activities based on our observations and analysis of available data during the first 6 months of the pilot program.

BACKGROUND

On August 19, 2011, before the pilot program was initiated, we provided the Secretary and Congress an initial audit report verifying FMCSA's compliance with requirements Congress established in 2001.⁹ The Department submitted a report to Congress on October 3, 2011, detailing actions taken in response to our recommendations.

The pilot program, as defined in the July 8, 2011, Federal Register notice, would last up to 3 years and allow Mexico-domiciled motor carriers to operate throughout the United States. Passenger and hazardous materials carriers are not allowed to participate in the program. Before receiving permanent long-haul operating authority, pilot program participants with provisional operating authority are required to progress through a series of inspections and evaluations of safety performance. Participants must comply with motor carrier safety regulations in addition to requirements associated with acceptance into the pilot program.

In designing the pilot program, FMCSA projected that 46 carriers would be needed to achieve a target of 4,100 inspections in order to obtain statistically valid results that detect differences in violation rates between United States and Mexican carriers of 2 percentage points or greater with 90 percent confidence. FMCSA issued updated guidance for conducting PASAs¹⁰ and for using electronic monitoring devices installed on pilot program trucks. FMCSA must complete a PASA of each prospective carrier and must publish the results of each PASA in

⁸ Cabotage is a prohibited activity under the provisions of the pilot program whereby motor carriers pick up cargo from one location in the United States and deliver the same cargo to another location within the United States.

⁹ Department of Transportation and Related Agencies Appropriations Act, Pub. L. No. 107-87, Title I, §350(a) (2001).

¹⁰ Section 350 of Pub.L. No. 107-87 defines elements that FMCSA must review during PASAs for each Mexico-domiciled carrier applying for participation in the pilot program.

the Federal Register for public comment before granting long-haul authority. In addition, FMCSA must equip each participating truck with an electronic monitoring device with Global Positioning System capabilities that transmits data for monitoring compliance with the hours-of-service and cabotage regulations.




FMCSA IS AT RISK OF NOT MEETING PARTICIPATION GOALS NECESSARY TO ASSESS MOTOR CARRIER SAFETY

The low participation in the pilot program puts FMCSA at risk of not meeting its goals for providing an adequate and representative sample of Mexico-domiciled carriers and inspections necessary to assess the impact on motor carrier safety. Although the 30 applications FMCSA received indicates that participation may increase, we cannot determine at this time whether increased participation will be sufficient to provide an adequate and representative sample of carriers and inspections.

Pilot Program Participation Has Been Minimal

Unless the number of program participants significantly increases, FMCSA could be at risk of not meeting its pilot program participation goals to provide an adequate and representative sample of Mexico-domiciled carriers and inspections necessary to assess the impact on motor carrier safety. As shown in figure 1, participation in the pilot program is substantially lower than FMCSA's goals for the number of carriers participating in the program and the number of inspections conducted.

Figure 1. FMCSA's Limited Progress in Meeting Pilot Targets

As of July 2012	FMCSA Pilot Target
4 Carriers 	46 Carriers
4 Vehicles 	No Target
5 Drivers 	No Target
89 Inspections	4,100 Inspections

Source: FMCSA

Four carriers—Transportes Olympic, Moises Alvarez Perez, Baja Express Transportes, and Transportes Del Valle—are participating in the pilot program. FMCSA estimated that at least 46 carriers would be needed to achieve a 3-year target of 4,100 inspections for statistically valid analysis of the safety performance of pilot program participants. Table 1 shows that FMCSA approved long-haul

operating authority for four carriers and completed 89 of the 4,100 inspections, 52 of which extended beyond the commercial zone.

Table 1. Pilot Program Participant Crossings, Inspections, and Out-of-Service Rates

Pilot Program Participant	Crossings	Destination		Inspections	OOS Rate	
		CZ	Non-CZ		Vehicle	Driver
Transportes Olympic	25	0	25	27	8.33%	0%
Moises Alvarez Perez	3	0	3	2	0%	0%
Baja Express	35	30	5	36	0%	0%
Transportes Valle de Guadalupe	24	5	19	24	0%	0%
Pilot Program Totals	87	35	52	89		

Source: FMCSA data

* Out-of-service (OOS) rates are calculated by dividing the number of OOS inspections by the total number of inspections for each category when at least one violation is available for the previous 12-month period.

Transportes Olympic is a one-truck and two-driver carrier from Nuevo Leon, and received pilot program authority in October 2011. The carrier is the only pilot program participant traveling beyond the border States at this time, and has made trips through Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee. Transportes Olympic's 18-month participation in the previous pilot program qualifies it for the permanent authority stage¹¹ of the current pilot program and exempts it from the inspection requirements for new carrier participants.

Moises Alvarez Perez is a one-truck and one-driver carrier from Tijuana. This carrier participated in the previous pilot program and was approved for the second pilot program on December 28, 2011. Moises Alvarez Perez has remained within the border States.

Baja Express is a one-truck and one-driver carrier from Tijuana. Baja Express entered the pilot program as a new carrier operation and was granted authority on March 30, 2012. Baja Express has remained within the border States for 5 of its 35 crossings and within the commercial zone for the other 30 crossings.

Transportes del Valle is a one-truck and one-driver carrier from Tijuana. Transportes del Valle entered the pilot program as a new carrier operation and was granted authority on June 12, 2012. Transportes del Valle has remained within the border States.

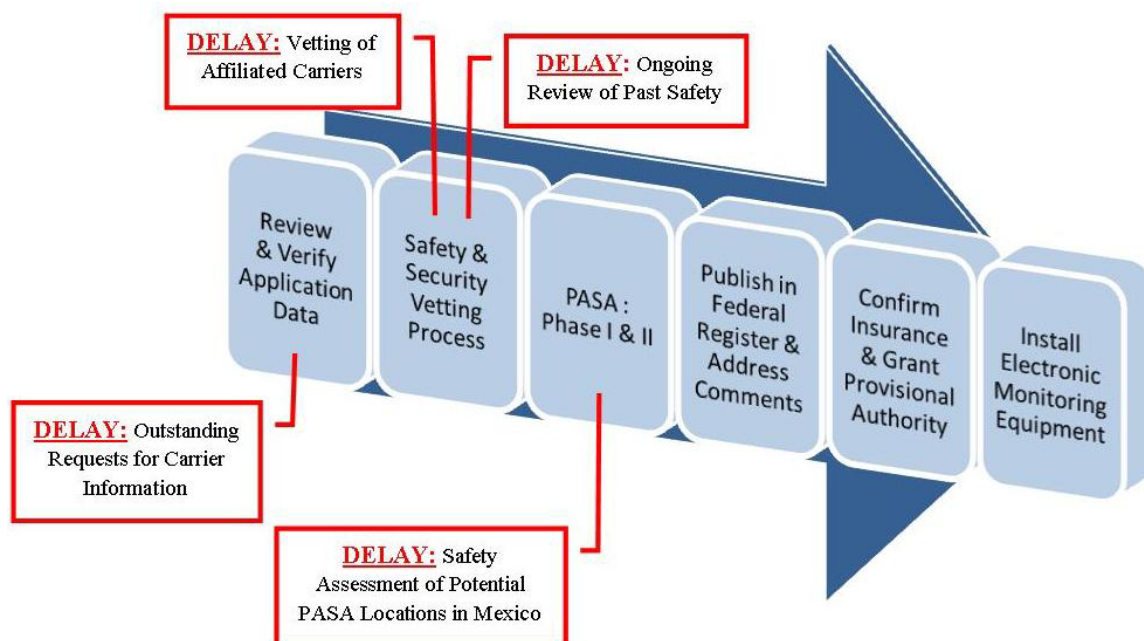
¹¹ Under the pilot program, participating carriers operate under three successive stages of monitoring. After operating in the pilot program for 18 months with a satisfactory safety rating and no pending enforcement or safety improvement actions, carriers advance to the permanent operating authority stage of the pilot program.

FMCSA Received 30 Applications for the Pilot Program

FMCSA has received 30 Mexico–domiciled carrier applications for the pilot program. According to data in FMCSA’s electronic Mexican Carrier Application Tracking System, seven carriers were being vetted, two carriers were awaiting a PASA, five carriers were undergoing PASAs, and nine carriers had successfully passed a PASA. In addition, FMCSA dismissed four applications and three carriers withdrew their applications.

FMCSA indicated that ongoing vetting of carriers’ past safety performance and affiliations with other carriers, outstanding requests for carrier information, and safety assessments of potential PASA locations in Mexico contributed to delays in processing applications. Figure 2 illustrates where delays are occurring within the application process.

Figure 2. Pilot Program Application Processing Delays



Source: OIG analysis

FMCSA IS STILL DEVELOPING OVERSIGHT MECHANISMS FOR SOME PILOT PROGRAM REQUIREMENTS

FMCSA’s oversight mechanisms did not ensure full compliance with pilot program requirements, and at the time of our review, it was still developing certain monitoring mechanisms. Specifically, FMCSA staff did not comply with new English language proficiency requirements for testing drivers on traffic and road signs during two of three PASAs we observed. FMCSA’s quality assurance personnel approved PASA results for two of three Mexico–domiciled carriers

before verifying that required driver's license testing had been completed, and made errors in determining whether one potential carrier complied with Federal drug and alcohol testing regulations. Additionally, FMCSA's monitoring plan did not include periodic reviews of electronic monitoring data quality and reporting accuracy as the pilot program moves forward and participation increases. Finally, FMCSA has delayed development of a mechanism for detecting cabotage violations.

FMCSA Did Not Comply with PASA Requirements for ELP Traffic and Road Sign Testing

FMCSA's PASA auditors did not comply with FMCSA's Federal Register notice that sets forth ELP requirements for testing drivers on traffic and road signs. During PASAs, FMCSA determines a driver's proficiency in English through an interview and a traffic and road sign test. FMCSA's July 8, 2011, Federal Register notice requires that responses to these tests be made in English. Contrary to this requirement, at two of the three PASAs we observed, FMCSA auditors allowed drivers to give responses to traffic and road sign questions in Spanish.

Specifically, during the three PASAs we observed—two in the United States and one in Mexico—the FMCSA auditors correctly followed the requirements for the driver interview.¹² This interview tests prospective drivers on their ability to respond in English to a minimum of four questions. For the traffic and road sign portion of the ELP test, FMCSA's 2008 ELP policy provides a list of 21 traffic and road signs from which its auditors randomly choose 4 signs to test drivers. The July 8, 2011, Federal Register notice requires responses to this test in English, and FMCSA did not update the 2008 ELP policy to reflect this requirement. This was a factor in safety auditors allowing Spanish responses as we observed FMCSA auditors using the 2008 ELP policy memo during the PASA.

The ELP guidance and training was developed for expeditious testing by enforcement officials in a time-sensitive roadside environment. However, PASAs are not conducted under such constraints. Based on our observations of PASAs, sufficient time is available for testing drivers on all 21 road signs rather than the 4 randomly selected signs. Mexico-domiciled drivers may not recognize all critical road signs. For example, drivers who did not pass the road sign test were often unable to explain the meaning of "Railroad Crossing" and "Wrong Way" signs in either language. Testing drivers on all 21 signs could provide a greater level of safety assurance and better ensure drivers' comprehensive knowledge of road signs.

¹² FMCSA completed five PASAs in the first 100 days of the pilot program—two in the United States and three in Mexico.

Finally, FMCSA does not require traffic and road sign tests to include a height clearance sign, which could be a potential risk factor as height clearance is an important factor in driving large commercial trucks.

FMCSA Did Not Always Complete Required Driver's License Testing Verifications Before Quality Assurance Personnel Approved PASA Results

In two of three instances we reviewed, FMCSA's quality assurance personnel approved PASA results for Mexico-domiciled carriers before FMCSA verified that Mexico's transportation ministry—Secretaria de Comunicaciones y Transportes (SCT)—had tested the qualifications of 18 prospective pilot program drivers for commercial driver's licenses (CDL). Although this oversight did not result in Federal Register publications of PASA results or the approval of unqualified drivers, it showed that FMCSA had not updated its quality assurance procedures for PASAs to reflect the requirement to verify the SCT confirmation.

By law, FMCSA must verify that Mexico has tested the qualifications of prospective pilot program drivers.¹³ FMCSA recognizes Mexico's Licencia Federal de Conductor as equivalent to CDLs in the United States. In the October 12, 2011, Federal Register, FMCSA tightened its rules to require that SCT test all pilot program drivers, after a FMCSA review of third-party testing facilities¹⁴ in Mexico found deficiencies such as passing rates below the required threshold and missing portions of the required curriculum. FMCSA's pilot program process calls for verifying the SCT testing of prospective drivers during its applicant vetting process, which is followed by the PASA. Once the carrier successfully completes the PASA, FMCSA publishes the results in the Federal Register.

We found that verification of SCT testing did not always occur before or during the PASA. We reviewed documentation for the three PASAs we observed and found that the FMCSA supervisors and new entrant specialists assigned to review PASA results for two carriers completed the quality assurance review process and approved the PASA results before FMCSA confirmed that SCT tested the carrier's prospective drivers. For one carrier, FMCSA entered the approved PASA results into its Mexican Carrier Application Tracking System (eMCATS) on November 29, 2011, although FMCSA received confirmation on the SCT license check on January 3, 2012. For the second carrier, FMCSA entered the approved

¹³ Department of Transportation and Related Agencies Appropriations Act, Pub. L. No. 107-87, Title I, § 350(a)(1)(B)(viii) (2001).

¹⁴ 49 C.F.R. § 383.5 defines a third-party tester as a person (including, but not limited to, another State, a motor carrier, a private driver training facility or other private institution, or a department, agency or instrumentality of a local government) authorized by the State to employ examiners to administer the CDL skills tests.

PASA results into eMCATS on January 3, 2012, although FMCSA received confirmation on the SCT license check on January 30, 2012.

Although FMCSA completed the quality assurance review process and approved the PASA results before it confirmed that SCT tested the carrier's prospective drivers, no FMCSA Register Notices were actually published before the driver qualifications were confirmed, and no unqualified drivers were approved. In our opinion, FMCSA's quality assurance personnel overlooked the SCT testing requirement because it was not included in FMCSA's PASA policy. Without clear procedures and quality assurance controls in place for its pre-authorization process, such as a comprehensive quality assurance checklist, FMCSA does not have adequate assurance that carriers have met requirements for participation in the pilot program.

FMCSA Made Errors in Validating that One Potential Pilot Program Carrier Complied With Drug and Alcohol Testing Regulations

FMCSA's PASA auditor did not follow FMCSA's procedures for assessing one potential carrier's compliance with drug and alcohol testing program requirements. Although we identified errors for only one of the three carriers¹⁵ we reviewed, the auditor did not verify the enrollment of the carrier's 16 potential drivers in a random drug and alcohol testing pool. Additionally, the auditor did not investigate why the carrier's drug and alcohol statistical summary report¹⁶ contained eight incomplete random drug tests and two incomplete random alcohol tests. Although the auditor reviewed the summary report to ensure drivers were tested at required rates, the auditor did not verify driver enrollment in a random testing pool or determine whether the incomplete tests were for drivers the carrier employed and the reasons for the incomplete tests. Also, FMCSA's quality assurance personnel did not identify or investigate the discrepancies.

Under Federal regulations, each driver must be enrolled in a random drug and alcohol testing pool¹⁷ and must have an equal chance for testing each time selections are made.¹⁸ Additionally, according to Federal regulations, the failure of a driver to appear for a random drug or alcohol test is considered a refusal to test.¹⁹ As a result of this violation of the regulations, the driver is prohibited from

¹⁵ We accompanied FMCSA on three of the five PASAs conducted as of January 27, 2012. For further information on our methodology see Exhibit A.

¹⁶ 49 C.F.R. § 382.401 requires employers to maintain records of drug and alcohol testing, including the collection process and the refusal of any driver to submit for testing.

¹⁷ 49 C.F.R. § 382.305(j)(1) requires that all covered drivers be enrolled in a random drug and alcohol testing pool.

¹⁸ 49 C.F.R. § 382.305(i)(2) requires that each driver selected for random alcohol and controlled substances testing under the selection process used, shall have an equal chance of being tested each time selections are made.

¹⁹ 49 C.F.R. §§ 40.191(a)(1) and .261(a)(1) state that if an employee fails to appear for any drug or alcohol tests, except a pre-employment test, the employee has refused to take a drug or alcohol test. 49 C.F.R. §§ 40.191(11)(c) and .261(b) state that the employee is subject to the consequences for a violation of agency regulations.

performing safety-sensitive functions.²⁰ To return to duty, the driver must be referred to and treated by a substance abuse professional, retested, and undergo a minimum of six follow-up tests.

We compared the carrier's list of drivers submitted for the pilot program to the carrier's drivers enrolled in the random testing pool and identified 1 of the 16 drivers that was omitted from the random testing pool. In response to our inquiry, FMCSA confirmed that the omitted driver was not enrolled in the random drug and alcohol testing pool and had performed safety sensitive duties for approximately 10 months. FMCSA attributed the omission to human error by its auditor. On December 22, 2011, we requested documentation for eight incomplete random drug tests and two incomplete random alcohol tests. FMCSA met with the carrier on February 10, 2012, and identified one active driver who did not report for testing. According to the carrier, the driver did not report for testing because the driver operated only in Mexico. FMCSA's review of its inspection records indicated that the driver operated in the United States on several occasions, the most recent on June 21, 2011. FMCSA disqualified the driver from performing safety-sensitive duties and required the carrier to take corrective action to address the problems identified with its drug and alcohol testing program.

FMCSA Did Not Plan to Periodically Review the Quality of Electronic Monitoring Data

FMCSA incorporated electronic monitoring devices in its approach for monitoring participant carriers' compliance with pilot program rules and motor carrier regulations and installed these devices on two trucks, one for each of the two approved carriers. However, FMCSA's pilot program monitoring plan does not call for periodic reviews of electronic monitoring data quality and reporting accuracy as the pilot program progresses. Rather, FMCSA has relied heavily on a federally required self-certification made by the equipment manufacturer and has used a reactive approach toward identifying data issues.

Although FMCSA addressed the data issues we identified, its approach to providing controls for such issues has been reactive rather than proactive. In one instance, 5 days after the first vehicle used in the pilot program began operations, FMCSA resolved an issue regarding the use of multiple assigned vehicle identifiers in the electronic monitoring data. FMCSA also addressed inconsistencies we identified in weekly operational reports generated from electronic data for inspections and northbound border crossings. For example, FMCSA amended two weekly operational reports to reflect a November 15, 2011, inspection and a December 27, 2011, northbound border crossing that were not indicated in previous reports. FMCSA also reviewed a potential hours of service

²⁰ 49 C.F.R. § 382.211 prohibits employers from using a driver who refuses to submit to testing from performing or continuing to perform safety-sensitive functions.

violation we identified in raw data that turned out to be an erroneous alert triggered by the electronic monitoring device. A manufacturer software upgrade resolved this issue.

Despite the actions FMCSA took in response to the data issues we identified, FMCSA's monitoring plan does not call for periodic reviews of electronic monitoring data quality and reporting accuracy as the pilot program moves forward and participation increases. For example, it has no provision in its pilot program monitoring plan to compare electronic data with the data obtained during border inspections as a check on the consistency of both data sources.

FMCSA Has Delayed Development of a Mechanism for Detecting Cabotage Violations

FMCSA has not completed full development of mechanisms for detecting cabotage. FMCSA assigned its electronic monitoring contractor²¹ the responsibility to develop a methodology and tools for detecting patterns of activity that could indicate cabotage. However, FMCSA indicated the contractor's development of the methodology remains on hold because it would not be cost-effective given the low participation in the pilot program.

Cabotage is a prohibited activity under the provisions of the pilot program whereby motor carriers pick up cargo from one location in the United States and deliver the same cargo to another location within the United States. Federal regulations²² and the NAFTA agreement²³ also prohibit cabotage. FMCSA has implemented a manual procedure for its field staff to use in checking weekly electronic monitoring reports to detect and follow up on suspicious routing. However, FMCSA staff in its Headquarters and field offices expressed concern that FMCSA does not currently have in place an effective means for detecting cabotage.

FMCSA DOES NOT HAVE SUFFICIENT PILOT PROGRAM PERFORMANCE DATA TO DETERMINE SAFETY EFFECTS

Because of the low participation rate in the pilot program, we are unable to assess whether the pilot program will adversely affect motor carrier safety. At this point, no statistically reliable projections or estimates can be made on important safety characteristics, such as the number of crashes that could be expected from long-haul Mexico-domiciled carriers. We will continue to monitor progress during the final stage of our audit series to determine whether sufficient data become

²¹ FMCSA negotiated a firm-fixed-price per unit contract with Teletrac, Inc., for the installation and monitoring of electronic monitoring equipment in pilot program trucks. The contract is for one base year through August 31, 2012, and two option years through August 31, 2014.

²² 49 C.F.R. Part 365.

²³ NAFTA Annex I, page I-U-20.

available to make reliable conclusions regarding the safety performance of pilot program participants.

To date, our analysis is limited to 27 of the 30 pilot program applicants,²⁴ but we were unable to identify any safety trends. Table 2 provides general descriptive statistics regarding the characteristics of the applicant pool.

Table 2. Characteristics of Pilot Program Applicants

Baja California is the most represented Mexican state of domicile.	14	are from Baja California.
	13	are from eight other Mexican states.
The majority of applicants filed as a “Corporation” for business type.	18	filed as a corporation.
	9	filed as sole proprietorships.
The majority of applicants have previously operated in the United States.	22	have operated in the United States.
	5	have never operated in the United States.
The majority of carriers applied as Motor Common Carriers of Property.	20	applied as Motor Common Carriers of Property.
	6	applied as Motor Private Carriers.
	1	applied as Motor Contract Carrier of Property.
The majority of carriers applied to operate less than 5 vehicles.	21	applied to operate less than 5 vehicles.
	6	applied to operate more than 5 vehicles.

Source: OIG analysis

The majority of program applicants expressed interest in participating with fewer than five trucks. Based on our tracking of applications, two carriers with larger fleets (Transportes Unimex with 30 trucks and GCC Transporte with 15 trucks) may receive pilot program authority, which would yield increased program activity.

CONCLUSION

Under the NAFTA cross-border trucking provisions, the United States and Mexico agreed to facilitate the transport of goods and services between the two nations. FMCSA’s pilot program authorizes Mexico-domiciled motor carriers to transport cargo throughout the United States, but FMCSA must ensure these carriers have basic safety management controls in place before beginning long-haul operations. A robust oversight program is vital to the success of the pilot program. Taking proactive steps to improve its guidance, monitoring, enforcement mechanisms, and data quality controls based on our findings during the early stages of the program will better position FMCSA to avoid any risks to motor carrier safety within the United States.

²⁴ Only 27 applications were uploaded into FMCSA’s application tracking system at the time of our review.

RECOMMENDATIONS

We recommend that the Federal Motor Carrier Safety Administrator:

1. Revise FMCSA's traffic and road sign testing policy and procedures to
 - a. Require English responses to questions about traffic and road signs, in accordance with the Federal Register requirements.
 - b. Require testing of all 21 traffic and road signs used for the PASA test.
 - c. Add a height clearance road sign to the traffic and road sign test.
 - d. Provide training and guidance on traffic and road sign testing to all enforcement officials.
2. Revise FMCSA's quality assurance procedures for PASAs to ensure that field supervisors and new entrant specialists validate the agency's verification of the Secretaria de Comunicaciones y Transportes–tested drivers and ensure the accuracy of drug and alcohol statistical summary reports and the accuracy of random drug and alcohol testing pools before approving PASAs.
3. Revise FMCSA's pilot program monitoring plan to include proactive controls such as periodic checks of electronic monitoring data quality and reporting accuracy.
4. When appropriate program participation warrants, complete the development of mechanisms for detecting cabotage violations as called for in the electronic monitoring contract.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

We provided FMCSA with our draft report for review and comment on May 11, 2012. We received its technical comments on May 24, 2012, and its formal response on July 27, 2012. FMCSA's response is included in its entirety as an appendix to this report. FMCSA concurred with recommendations 1 and 4. We consider FMCSA's actions to address recommendation 1 sufficient but open pending receipt of documentation of its actions. We consider recommendation 4 to be resolved and closed based on actions FMCSA has taken.

FMCSA did not concur with recommendations 2 and 3, which call for FMCSA to revise its PASA quality assurance procedures and its pilot program data monitoring plan; but it did agree to re-emphasize and monitor existing procedures. Although FMCSA agreed that effective processes, controls, and monitoring are

critical, it had concerns that the instances we observed were isolated events. While we continue to believe that the NAFTA pilot program could benefit from improved procedures in the areas noted, we recognize that the program has had minimal participation and thus provided limited operational data for review. Further, FMCSA has demonstrated a willingness to address issues we raised during our audit and in response to our draft report. Accordingly, we consider FMCSA's actions on recommendations 2 and 3 to be sufficient at this time, and the recommendations will be closed but subject to review during our next audit. We will evaluate FMCSA's actions to address all recommendations during our congressionally mandated final audit of the pilot program, which is due 6 months after the pilot program ends.

ACTIONS REQUIRED

In accordance with the follow-up provisions in Department of Transportation Order 8000.1C, we request that FMCSA provide us within 30 days documentation of its June 11, 2012, PASA policy and a roster for its August 2012 refresher training. Upon receipt of this documentation, we will close recommendation 1. No additional action is required.

We appreciate the courtesies and cooperation of Department of Transportation and Federal Motor Carrier Safety Administration representatives during this audit. If you have any questions concerning this report, please call me at (202) 366-5630 or Kerry R. Barras, Program Director, at (817) 978-3318.

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cc: Karen Lynch, FMCSA Liaison, MC-PRS
Martin Gertel, OST Liaison, M-1

EXHIBIT A. SCOPE AND METHODOLOGY

We conducted our work from October 2011 through May 2012 in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our objectives for this interim audit were to determine whether (1) the pilot program consists of an adequate and representative sample of Mexico–domiciled carriers that are likely to engage in cross–border operations beyond the United States municipalities and commercial zones on the United States–Mexico border, (2) Federal and State monitoring and enforcement activities are sufficient to ensure that participants in the pilot program are complying with all applicable laws and regulations, and (3) the Department has established sufficient mechanisms to determine whether the pilot program is adversely affecting motor carrier safety.

To determine whether the pilot program consists of a representative and adequate sample of Mexico–domiciled carriers that are likely to engage in cross–border operations beyond the United States municipalities and commercial zones on the United States–Mexico border, we monitored the progress of the pilot program and collected applicant and participant data.

To determine whether monitoring and enforcement activities were sufficient to ensure that pilot program participants complied with applicable laws and regulations, we conducted audit procedures for each process we examined, including those for pilot program applications, conduct of PASAs, border enforcement plans, and electronic monitoring devices. We reviewed guidance and attended pilot program training courses and webinars provided to FMCSA and State law enforcement officials. We accompanied FMCSA on three of the five PASAs conducted, two in the United States and one in Mexico. We selected the three PASAs for observation based on timing and location factors. We observed procedures FMCSA personnel used to qualify carriers for the pilot program, including identifying and inspecting commercial vehicles and testing prospective drivers. We interviewed FMCSA personnel to gauge their understanding of PASA procedures and vehicle/driver inspections, and to resolve any differences we observed between planned and actual procedures used by FMCSA personnel.

To assess whether the Department has established sufficient mechanisms to determine whether the pilot program is adversely affecting motor carrier safety we reviewed performance data FMCSA intends to use, provided an interim snapshot of the pilot program, and identified key characteristics of the applicant group (business type, fleet size, etc.).

EXHIBIT B. ACTIVITIES VISITED OR CONTACTED

U.S. Department of Transportation

Office of the Secretary

Office of Drug and Alcohol Policy and Compliance, Washington, DC

Federal Motor Carrier Safety Administration

Headquarters Offices, Washington, DC

Field Offices

San Diego, California

El Paso, Texas

Weslaco, Texas

Mexico-Domiciled Carriers (Observations of PASAs)

Tijuana, Mexico

El Paso, Texas

Weslaco, Texas, and Pharr, Texas

EXHIBIT C. MAJOR CONTRIBUTORS TO THIS REPORT

<u>Name</u>	<u>Title</u>
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APPENDIX. AGENCY COMMENTS



U.S. Department of
Transportation

**Federal Motor Carrier
Safety Administration**

Memorandum

Subject: **INFORMATION:** Response to OIG Interim
Draft Report on NAFTA Pilot Program

Date: July 26, 2012

From: Anne S. Ferro
Administrator *W.A. Quade*

**Reply to
Attn: of** William A. Quade
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for Enforcement
X62172

To: Joseph W. Comé
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Prior to the implementation of the U.S.-Mexico Cross Border Long Haul Trucking Pilot Program, the Federal Motor Carrier Safety Administration (FMCSA) established the necessary policies, procedures, and guidelines to conduct a safe and effective pilot program. The FMCSA has been diligent in its efforts to monitor participating carriers and drivers, ensure that the pilot program is operating in accordance with the Agency's regulations and commitments, and is resulting in a safe and effective program.

The FMCSA designed the pilot program to exceed all legal and regulatory requirements regarding the safety of carriers. The Agency implemented a vigorous safety and security vetting program that successfully identified four carriers that were not allowed to participate due to a poor safety history or because they did not meet the Department of Homeland Security (DHS) requirements. We also implemented a comprehensive driver vetting process that compiles the driver's driving history in Mexico and the U.S. and ensures their original testing met the requirements of the U.S.-Mexico Memorandum of Understanding regarding Commercial Driver Licenses. The FMCSA also developed a comprehensive policy for conducting Pre Authority Safety Audits (PASA) that includes reviewing each applicant's capabilities for ensuring compliance with regulations for key safety systems. These audits also ensure that each driver and every vehicle intended for participation in the program is in compliance with the regulations.

Following entry into the program, FMCSA has an aggressive monitoring program that includes utilizing electronic monitoring devices installed on each vehicle that enables the Agency to: 1) receive notifications before participating vehicles reach the border; 2) monitor the drivers' hours-of-service compliance, and 3) have visibility into vehicle movements to identify possible violations of authority that would exist if the carrier transports cargo from point-to-point within the U.S. The monitoring program has resulted in all required inspections being conducted on

Appendix. Agency Comments

Mexican carriers (each carrier is subject to inspection every time they cross for the first 3 months they participate in the program) and includes having investigators perform weekly reviews of the data from the system to identify and follow-up on possible violations.

The FMCSA's rigorous screening and monitoring program has resulted in over 52,000 miles of travel by participating carriers without a crash and 83 inspections during which only one vehicle and no drivers were placed out-of-service (the national out-of-service rates for all inspections in the U.S. are 20.7 percent for vehicles and 5.5 percent for drivers).

To the extent that the OIG may have identified an occurrence based on limited observations that could suggest further improvement to the program, we ask that the OIG ensure the presentation of the issue in its report comport with the limited scale of the program and its observations. For example, FMCSA performed a review of the drug and alcohol testing program for every carrier that received a PASA. These requirements are established in FMCSA's electronic Field Operations Training Manual (eFOTM) and each auditor and investigator is trained on these requirements prior to being certified to conduct safety audits or compliance reviews. During the course of its work, OIG noted a single instance where an FMCSA auditor made an error in the process used to verify the accuracy of the driver list submitted for random drug tests. While this error should not have occurred, it is not indicative of a systemic failure of process, but as an isolated error noted in an observation of a single test.

Presently, four carriers are approved to operate in the program. The Agency continues to conduct the verification and oversight actions necessary and is considering additional carriers for participation in the program. While FMCSA will draw what lessons it can from the pilot program, the Agency recognizes that statistically valid results will require much broader participation as identified at the outset of the program. The Agency continues to work with the Government of Mexico to provide information regarding the pilot program to interested carriers.

RECOMMENDATIONS AND RESPONSES

Recommendation 1: Revise FMCSA's traffic and road sign testing policy and procedures to: (a) require English responses to questions about traffic and road signs, in accordance with the Federal Register requirements; (b) require testing of all 21 traffic and road signs used for the PASA test; (c) add a height clearance road sign to the traffic and road sign test; and, (d) provide training and guidance on traffic and road sign testing to all enforcement officials.

Response: Concur. The FMCSA issued a revised policy memorandum to reiterate to the Agency's auditors that the English Language Proficiency interview and sign evaluation must be conducted completely in English during the PASA, in keeping with the requirements explained in the Agency's Federal Register notices regarding the pilot program. In addition, this policy added a height restriction sign and requires that all 22 signs be tested during the PASA. This policy was approved on June 11, 2012, and distributed to FMCSA's field staff on June 12, 2012.

While training prior to implementation of the pilot program provided the instruction that sign testing be performed in English, refresher training for FMCSA's auditors is scheduled for August 2012. The revised policy will be reinforced during the refresher training session.

Appendix. Agency Comments

Recommendation 2: Revise FMCSA’s quality assurance procedures for PASAs to ensure that field supervisors and new entrant specialists validate the Agency’s verification of the Secretaria de Comunicaciones y Transportes (SCT)-tested drivers and ensure the accuracy of drug and alcohol statistical summary reports and the accuracy of random drug and alcohol testing pools before approving PASAs.

Response: Non-concur. The Agency recognizes the importance of effective PASA processes and quality controls and established protocols for confirming the validity of a motor carrier’s drug and alcohol testing program. This review process is used during a PASA, a compliance review, or other investigation of a carrier’s drug and alcohol testing program. The documentation for this process is contained in the Agency’s eFOTM.

The FMCSA implemented processes to ensure that field supervisors and new entrant specialists verify that drivers are tested by SCT. FMCSA’s North American Borders Division, not the Agency’s field staff, is responsible for this process. The North American Borders Division submits requests to SCT for verification and maintains the documentation provided by SCT for each driver a carrier would use in the pilot program. An interim driver vetting policy was updated in February 2012 to outline where the responsibility for this function lies within the organization.

Further, the Agency’s PASA approval process provides for several internal controls, including final approval authority within the North American Borders Division. No PASAs were approved by the North American Borders Division prior to confirmation of the drivers’ licenses and SCT-testing. In addition, the PASA must be completed before the Agency posts the carrier’s name in the FMCSA Register to enable interested parties to protest the application for operating authority; the FMCSA Register process is applied to all motor carriers seeking operating authority. There are no instances of an FMCSA Register notification being issued for a carrier before FMCSA confirmed the drivers’ licenses and SCT-testing. To date, FMCSA has not issued an FMCSA Register notification concerning GCC Transporte’s application for operating authority.

For example, the dates that drivers’ license records were received for Baja Express and GCC Transporte are as follows:

Baja Express

Federal Policy Conviction Check: January 24, 2012
 SCT – DGAF Conviction Check: January 31, 2012
 Licencia Federal Test Location Check Received: January 3, 2012
 PASA Approved: February 21, 2012

GCC Transporte

Federal Policy Conviction Check: January 5, 2012
 SCT-DGAF Conviction Check: January 27, 2012
 Licencia Federal Test Location Check Received: January 30, 2012
 PASA Approved: Not yet approved

Appendix. Agency Comments

The FMCSA notes that during the PASA observed by OIG, FMCSA's auditor collected significant documentation of GCC Transporte's drug and alcohol testing program. However, the FMCSA auditor did not strictly follow the established protocol for the drug and alcohol program. FMCSA considers this instance a single noncompliance with existing policy by staff, and not evidence of the need to revise its quality assurance procedures for PASAs. Therefore, while FMCSA will reemphasize the procedures in the refresher training scheduled for August 2012, it considers the procedures in place to be adequate. It will continue to monitor the implementation of these procedures but does not plan to revise them at this time.

Recommendation 3: Revise FMCSA's pilot program monitoring plan to include proactive controls such as periodic checks of electronic monitoring data quality and reporting accuracy.

Response: Non-concur. The FMCSA's Monitoring Policy establishes the procedures for routinely reviewing the reports and data concerning electronic monitoring devices for potential violations of the pilot program's requirements. This process has been successfully used to identify potential issues for subsequent investigation.

The Agency acknowledges that two operational reports reviewed by OIG staff during this engagement were subsequently updated. The FMCSA discovered the errors and the reports were revised accordingly. Further, the revisions made to the reports did not have an adverse impact on the Agency's oversight of the pilot program.

With regard to the potential hours-of-service (HOS) violation identified by the OIG based on its review of raw data from the monitoring system, the Agency notes that while the Teletrac unit on the vehicle reported a potential HOS violation, the system's software correctly interpreted the final data set and determined that there was no HOS violation. Further, FMCSA staff reviewed the duty status information and confirmed that there was no HOS violation. Additionally, Teletrac upgraded the in-vehicle unit to prevent future false alerts of violations related to drivers' use of sleeper berths. This programming upgrade was completed within days of the false alert in the raw data.

Recommendation 4: When appropriate program participation warrants, complete development of mechanisms for detecting cabotage violations as called for in the electronic monitoring contract.

Response: Concur. As noted above, the Agency established a methodology for using the Teletrac equipment to collect data on compliance with cabotage restrictions. Should an incident of cabotage be identified in this program, FMCSA would contact the DHS Customs and Border Protection component, the Federal agency responsible for enforcing the cabotage regulations.

Although the Agency's contract with Teletrac includes a clause for the contractor to develop an automated means of detecting cabotage, FMCSA has not exercised this automated support option because participation in the program remains low and this level of support is not needed at this time. However, when participation levels increase to the point where manual monitoring would not be practicable, we will exercise the automated support provision of the contract.

Appendix. Agency Comments

We appreciate the continuing dialogue with OIG to address these issues. Should you have any questions on the pilot program, or need additional information regarding our responses, please contact William A. Quade, Associate Administrator for Enforcement at 202-366-2172 or william.quade@dot.gov.