
Office of Inspector General

Audit Report

**FMCSA GENERALLY COMPLIES WITH
STATUTORY REQUIREMENTS, BUT ACTIONS
ARE NEEDED PRIOR TO INITIATING
ITS NAFTA CROSS-BORDER TRUCKING
PILOT PROGRAM**

Federal Motor Carrier Safety Administration

Report Number: MH-2011-161

Date Issued: August 19, 2011





Memorandum

**U.S. Department of
Transportation**

Office of the Secretary
of Transportation
Office of Inspector General

Subject: **ACTION:** FMCSA Generally Complies With
Statutory Requirements, but Actions Are Needed
Prior To Initiating Its NAFTA Cross-Border
Trucking Pilot Program
Report Number MH-2011-161

Date: August 19, 2011

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 6, 2011, the United States Secretary of Transportation and the Mexico Secretaría de Comunicaciones y Transportes signed a memorandum of understanding (MOU) resolving a long-standing dispute over long-haul, cross-border trucking services between the United States and Mexico under the provisions of the North American Free Trade Agreement (NAFTA). 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 border commercial zones throughout the United States (long-haul operations).²

The Omnibus Appropriations Act of 2009³ ended the previous pilot program without authorizing long-haul operations for Mexico-domiciled carriers. Consequently, Mexico imposed tariffs on several categories of goods imported from the United States. In June 2011, Mexico agreed to completely lift the tariffs after the first Mexico-domiciled motor carrier receives authority for long-haul operations into the United States.

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. 111-8 (2009).

By law,⁴ FMCSA must first test long-haul operations as part of a pilot program before it grants long-haul operating authority to Mexico-domiciled motor carriers. This legislation also requires the Office of Inspector General (OIG) to review FMCSA's implementation of pilot programs for granting long-haul authority to Mexico-domiciled motor carriers. Before a pilot program is initiated, (1) OIG must provide an initial report to the Secretary and Congress verifying FMCSA's compliance with requirements Congress established in 2001⁵ and (2) the Secretary must take action as necessary to address any issues raised in our initial report and submit a report to Congress detailing such actions. This report satisfies our requirement for issuing an initial report on the pilot program.

Our overall audit objective was to assess FMCSA's policy, procedures, and processes for granting operating authority to Mexico-domiciled motor carriers under the pilot program and for monitoring and ensuring the carriers' compliance with United States laws and regulations. Specifically, we (1) verified whether FMCSA complied with requirements set forth in Section 350(a) of the 2001 legislation, which included conducting pre-authorization safety audits (PASAs)⁶ for Mexico-domiciled carriers seeking long-haul operating authority, (2) determined whether FMCSA addressed language differences between Section 350(a) and its regulations that we identified in our initial audit of the prior pilot program, and (3) identified issues that should be addressed before the pilot program is initiated.

To conduct our work, we interviewed Federal and state officials, reviewed FMCSA documentation, and observed inspections at 6 of 23 commercial truck border crossings in El Paso, Texas; Laredo, Texas; Otay Mesa, California; and Tecate, California. We also observed inspections at weigh stations in Decatur, Texas, and Dumfries, Virginia. We conducted this audit from April through July 2011, in accordance with generally accepted government auditing standards. Exhibit A details our objectives, scope, and methodology and exhibit B identifies the site visits and contacts we made.

RESULTS IN BRIEF

FMCSA has met most of the 34⁷ Section 350(a) requirements that it must meet before processing applications from pilot program participants. However, the agency has not met those requirements related to conducting safety reviews onsite

⁴ U.S. Troop Readiness, Veteran's Care, Katrina Recovery, and Iraq Accountability Act, 2007, Pub. L. No. 110-28, § 6901.

⁵ Department of Transportation and Related Agencies Appropriations Act, Pub. L. No. 107-87, Title I, § 350(a) (2001).

⁶ The PASA is a 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.

⁷ We identified 34 distinct requirements from among the 10 sub-sections of Section 350(a). See exhibit C.

in Mexico. Specifically, FMCSA has not finalized its plans for nor identified the specific process it will use to comply with five requirements to conduct 50 percent of PASAs and compliance reviews in Mexico, and its policy on conducting PASAs for the new pilot program does not address where the reviews will be conducted.

Two variations between FMCSA's regulations and the Section 350(a) requirements that we reported on previously still remain, but are not significant provided that pilot program plans are successfully executed. We reported in September 2007⁸ that FMCSA's regulation and policy language slightly differed from the language in 3 of the 34 specific Section 350(a) requirements pertaining to truck inspections during PASAs, border license checks of drivers working for Mexican carriers, and safety rules for longer combination vehicles. FMCSA updated its policy language on border license checks to comply with Section 350(a). Although the regulation language continues to differ for the two requirements pertaining to PASA truck inspections and longer combination vehicles, the pilot program and FMCSA's written PASA guidance complies with the Section 350(a) requirements. We see no safety impacts arising from these differences if the guidance is put in place and operates effectively.

FMCSA continues to have personnel, facilities, and systems in place to conduct adequate inspections of Mexican drivers and trucks at border crossings. FMCSA also took actions towards implementing three recommendations from our August 2009 report⁹ that would improve its monitoring of Mexican Federal commercial driver's license (CDL) holders operating in the United States, including pilot program participants. Although FMCSA has taken positive actions to improve monitoring of Mexican drivers and trucks, it has not yet addressed certain issues for implementing the pilot program. Specifically, FMCSA has not (1) issued site-specific plans for checking drivers and trucks at the border, (2) established a system to verify driver and truck eligibility for the pilot program, (3) issued an implementation plan nor acquired electronic monitoring devices for use in the pilot program, and (4) conducted pilot program training for inspection personnel at the border and within the United States.

The Secretary is required by law to submit a report to Congress detailing the actions the Department is taking to address each of the issues raised in this report. We are making a recommendation to ensure that the Secretary's report to Congress addresses these issues. If the Secretary elects to initiate the pilot program

⁸ OIG Report Number MH-2007-065, "Issues Pertaining to the Proposed NAFTA Cross-Border Trucking Demonstration Project," September 6, 2007. All OIG reports are available on our website at: www.oig.dot.gov.

⁹ OIG Report Number MH-2009-068, "Follow-Up Audit of the Implementation of the North American Free Trade Agreement's (NAFTA) Cross-Border Trucking Provisions," August 17, 2009. OIG issued similar reports in August 2007, January 2005, May 2003, and June 2002. Exhibit D summarizes our August 2009 report and lists other prior OIG audits of cross-border trucking.

following his report to Congress, we will be required under Section 6901 to monitor and review the pilot program and submit interim and final reports to the Secretary and Congress.

BACKGROUND

Section 6901 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007 permits DOT to obligate or expend funds to grant long-haul authority to Mexico-domiciled trucks only after first testing such long-haul operations through a pilot program.¹⁰ Section 6901 details additional requirements for OIG. Specifically, the legislation requires OIG to provide an initial report, before FMCSA grants long-haul authority to any carrier, to the Secretary of Transportation and Congress verifying that the Secretary has established sufficient mechanisms to ensure Mexico-domiciled motor carriers granted long-haul authority comply with Federal motor carrier safety laws and regulations; and also verifying FMCSA's compliance with requirements set forth in Section 350(a) of the Department of Transportation and Related Agencies Appropriation Act of 2002.

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

Several agencies have roles in overseeing Mexico-domiciled trucks entering the United States. FMCSA must monitor the operational safety of Mexico-domiciled motor carriers participating in the pilot program. Monitoring includes verifying the motor carrier's operating authority, inspecting trucks, checking driver's licenses, reporting crashes, and initiating enforcement actions, when appropriate. To accomplish these monitoring activities, FMCSA works closely with state commercial motor vehicle safety agencies, which assist FMCSA with inspecting Mexico-domiciled drivers and trucks as they cross the border and within the United States. FMCSA must also coordinate its border operations with the Department of Homeland Security, Customs and Border Protection (CBP), which has jurisdiction over the ports of entry with Mexico.

¹⁰ FMCSA must conduct any pilot program in compliance with requirements in 49 U.S.C. 31315(c).

FMCSA HAS MET MOST STATUTORY REQUIREMENTS, BUT HAS NOT FINALIZED PLANS FOR REVIEWS IN MEXICO

FMCSA has met most of the 34 Section 350(a) requirements that it must meet before processing applications from pilot program participants. However, the agency has not yet met those requirements related to conducting safety reviews onsite in Mexico. Specifically, FMCSA has not finalized its plans for nor identified the specific process it will use to comply with five requirements to conduct 50 percent of PASAs and compliance reviews in Mexico, and its policy on conducting PASAs for the new pilot program does not address where the reviews will be conducted.

Section 350(a) requires that Mexico-domiciled motor carriers applying for participation in the pilot program must first successfully complete a PASA to obtain provisional long-haul operating authority. Although FMCSA's PASA guidance does not address where FMCSA will conduct the reviews, the guidance does address critical safety elements such as (1) a controlled substance and alcohol testing program, (2) a system for complying with hours-of-service requirements, (3) proof of insurance, (4) identification of qualified drivers for United States operations, and (5) records of periodic inspection of vehicles for use in the United States. After verifying these elements, FMCSA officials then perform vehicle inspections and verify whether the motor carrier can comply with Federal regulations. Within 18 months of that motor carrier being granted conditional operating authority, FMCSA must conduct a compliance review, which could lead to permanent operating authority.¹¹

FMCSA officials informed us in June 2011 that they intend to comply with the law for conducting PASAs and compliance reviews, but have not developed plans and safeguards for conducting PASAs in Mexico. They had previously informed us in April and May 2011 that they did not plan to conduct reviews in Mexico due to safety concerns. FMCSA's policy for conducting PASAs does not address where PASAs will be conducted. Without specific plans for conducting onsite PASAs or compliance reviews, FMCSA may not comply with the following five requirements.

§350(a)(1)(B)(vii) requires evaluation of a motor carrier's safety inspection, maintenance, and repair facilities¹² or management systems, including verification of records of periodic vehicle inspections.

¹¹ According to FMCSA, the permanent authority under the pilot program may be converted into standard permanent authority upon completion or termination of the pilot program. Further, in calculating the 18 months under the current pilot program, carriers could receive credit for time operated during the previous pilot program.

¹² Evaluation of a repair facility would require an on-site inspection in Mexico.

§350(a)(1)(C)(i) requires Mexican motor carriers with three or fewer commercial vehicles need not undergo on-site safety examination; however 50 percent of all safety examinations of all Mexican motor carriers shall be conducted on site.

§350(a)(1)(C)(ii) requires that such on-site inspections shall cover at least 50 percent of estimated truck traffic in any year.

§350(a)(2)(A) requires that Mexican motor carriers with three or fewer commercial vehicles need not undergo on-site compliance reviews; however 50 percent of all compliance reviews of all Mexican motor carriers shall be conducted on site.

§350(a)(2)(B) requires that any Mexican motor carrier with four or more commercial vehicles that did not undergo an on-site safety exam under (a)(1)(C), shall undergo an on-site safety compliance review under this section.

We will review, during our next audit, any implementation or documentation issues with implementing these requirements, if the pilot program proceeds. This upcoming audit will include determining whether the application process emphasizes compliance with all safety rules currently applying to Mexico-domiciled carriers.

GUIDANCE COMPLIES WITH STATUTORY REQUIREMENTS BUT VARIATIONS BETWEEN REGULATIONS AND STATUTES REMAIN

Two variations between FMCSA's regulations and the Section 350(a) requirements that we reported on previously still remain, but are not significant provided that pilot program plans are successfully executed. We reported in September 2007 that FMCSA's regulation and policy language slightly differed from the language in 3 of the 34 specific Section 350(a) requirements pertaining to truck inspections during PASAs, border license checks of drivers working for Mexican carriers, and safety rules for longer combination vehicles. FMCSA updated its policy language on border license checks to comply with Section 350(a). Although the regulation language continues to differ for the two requirements pertaining to PASA truck inspections and longer combination vehicles, the pilot program and FMCSA's written PASA guidance complies with the Section 350(a) requirements. We see no safety impacts arising from these differences if the PASA and border inspection guidance, particularly plans for checking all drivers and trucks at all border crossings, is put in place and operates effectively. Specifically:

Section 350(a)(1)(B)(vi) requires a PASA inspection of all Mexican trucks to be used under provisional authority that do not have a valid inspection decal. In contrast, FMCSA's regulation¹³ implementing this requirement limits such inspections to "available commercial motor vehicles." FMCSA's description of the pilot program in the Federal Register and its written PASA guidance requires that PASAs include an inspection of all vehicles that the carrier intends to operate under the pilot program. We see no safety impacts arising from this language difference if FMCSA effectively implements its PASA and border inspection guidance, particularly plans for checking all trucks.

Section 350(a)(1)(B)(v) requires a review of available data concerning the motor carrier's safety history and other information to determine the carrier's preparedness to comply with Federal motor carrier safety rules and regulations and hazardous materials rules and regulations. FMCSA's regulations implementing this requirement have not been updated to specifically reference Part 380 of the Federal motor carrier safety regulations, which establishes minimum requirements for operators of longer combination vehicles, such as obtaining knowledge, skills, and training for operating such vehicles. However, the Federal Register and PASA guidance state that PASAs will verify the Mexico-domiciled motor carrier's familiarity with and preparedness for compliance with all Federal motor carrier safety regulations. We see no safety impacts arising from this language difference.

FMCSA HAS NOT ADDRESSED CERTAIN ISSUES NEEDED FOR IMPLEMENTING THE PILOT PROGRAM

Our site visits to 6 of 23 border crossings in El Paso, Texas; Laredo, Texas; Otay Mesa, California; and Tecate, California, found that FMCSA has personnel, facilities, and systems in place to conduct adequate inspections of Mexican drivers and vehicles at the border. FMCSA also took actions towards implementing three recommendations from our August 2009 report that would improve the monitoring of Mexican Federal CDL holders operating in the United States, including pilot program participants. We plan to verify FMCSA's actions before closing these recommendations. Two remaining recommendations, which relate to commercial bus inspections, are not applicable to FMCSA's pilot program.

Although FMCSA has taken positive actions to improve monitoring of Mexican drivers and trucks, it has not yet addressed certain issues for implementing the pilot program. Specifically, FMCSA has not (1) issued coordinated site-specific plans for checking drivers and trucks at the border, (2) established a system to

¹³ C.F.R. Part 365, Subpart E, Appendix A, 1(c)(6).

verify driver and vehicle eligibility for the pilot program, (3) issued an implementation plan nor acquired electronic monitoring devices for use in the pilot program, and (4) conducted pilot program training for inspection personnel at the border and within the United States.

FMCSA Has Not Issued Coordinated Site-Specific Plans for Checking Drivers and Trucks at Each Border Crossing

FMCSA has not issued, for each border crossing, site-specific plans for checking drivers and trucks participating in the pilot program. Site-specific plans are necessary because of varying logistical conditions at the 23 border crossings with large truck operations. Without site-specific plans and full coordination with CBP and state inspection agencies, the risk increases that Mexican carriers will not be inspected in accordance with FMCSA's pilot program provisions.¹⁴

The border inspections are a critical component of the oversight required by Section 350(a) because they validate that drivers entering the country are properly licensed and that trucks displaying a valid Commercial Vehicle Safety Alliance (CVSA) safety inspection decal have received a safety inspection within the last 3 months. If the truck lacks the decal, a safety inspection is required before the truck can enter the United States.

In fiscal year (FY) 2010, FMCSA and state officials inspected more than 475,000 Mexico-domiciled motor carrier trucks along the United States-Mexico border. During this period, Mexico-domiciled driver and truck out-of-service rates compared favorably with United States-domiciled driver and truck out-of-service rates. Mexico-domiciled carriers had a driver out-of-service rate of 1.14 percent and a vehicle out-of-service rate of 17.04 percent. In contrast, United States-domiciled carriers had a driver out-of-service rate of 5.52 percent and a vehicle out-of-service rate of 19.82 percent.

In May 2011, we observed driver and truck inspections at five of the six highest volume border crossings—Bridge of the Americas and Ysleta crossings in El Paso, Texas; Columbia Solidarity and World Trade Bridge crossings in Laredo, Texas; and the Otay Mesa crossing in San Diego, California. We also observed inspections at a lower volume crossing in Tecate, California. These six crossings accounted for 65 percent of the volume of all FY 2010 large truck traffic at the 23 truck crossings along the United States-Mexico border. Figure 1 is a photograph of the Otay Mesa border crossing and cites the truck crossing volume for the six border crossing sites we visited.

¹⁴ During the first 3 months of the pilot program, FMCSA will inspect all drivers and vehicles of Mexico-domiciled motor carriers that have provisional authority. According to FMCSA's Federal Register notice, after the first 3 months of inspections and an FMCSA evaluation, the carrier would be inspected at rates comparable to other Mexico-domiciled carriers entering the United States. At the time of our review, FMCSA had not defined these rates.

Figure 1. Otay Mesa Border Crossing and FYs 2009 and 2010 Truck Crossing Volume for Sites OIG Visited



Rank* (of 23)	Percent **	Border Crossing	Total Truck Crossings	
			FY09	FY10
1	26%	World Trade Bridge Laredo, Texas	1,066,537	1,226,830
2	16%	Otay Mesa Otay Mesa, California	684,307	729,178
4	8%	Ysleta El Paso, Texas	309,507	378,307
5	7%	Bridge of the Americas El Paso, Texas	333,651	327,033
6	7%	Columbia Bridge Laredo, Texas	305,693	323,347
12	1%	Tecate Tecate, California	67,609	58,273

OIG Site Visit: Otay Mesa Port of Entry. Otay Mesa, California.

*Crossings were ranked by the greatest number of truck entries in FY 2010.

**Percentage of FY 2010 total southern border crossings for each port of entry.

We observed FMCSA's standard practice of visually selecting commercial zone-authorized trucks for inspection as they entered and prepared to exit the crossings. At the time of our border crossing visits, FMCSA had not issued site-specific guidance on how it would identify drivers and trucks participating in the pilot program for inspection. FMCSA staff expected that these drivers and trucks would be identified via electronic equipment installed on Mexico-domiciled carrier trucks. FMCSA officials informed us that using such electronic equipment would eliminate the need for site-specific plans, and that an overall plan for using the electronic equipment to identify and select pilot program trucks for inspection would suffice. However, as of June 30, 2011, FMCSA has not issued a contract to procure electronic equipment that would assist in identifying pilot program trucks.

A coordination agreement between FMCSA, CBP, and the states is essential to ensuring that appropriate inspections take place. The design and physical conditions of the compound at some crossings allow trucks to leave the border compound directly from CBP entrance booths, unless FMCSA or the states select them for inspection. For example, the traffic flow at border crossings such as El Paso, Laredo, and Ysleta allows vehicles to leave the border compound directly from CBP booths without direct routing through FMCSA or state inspection facilities. Figure 2 is a traffic diagram and an aerial photograph of the Ysleta border crossing facility.

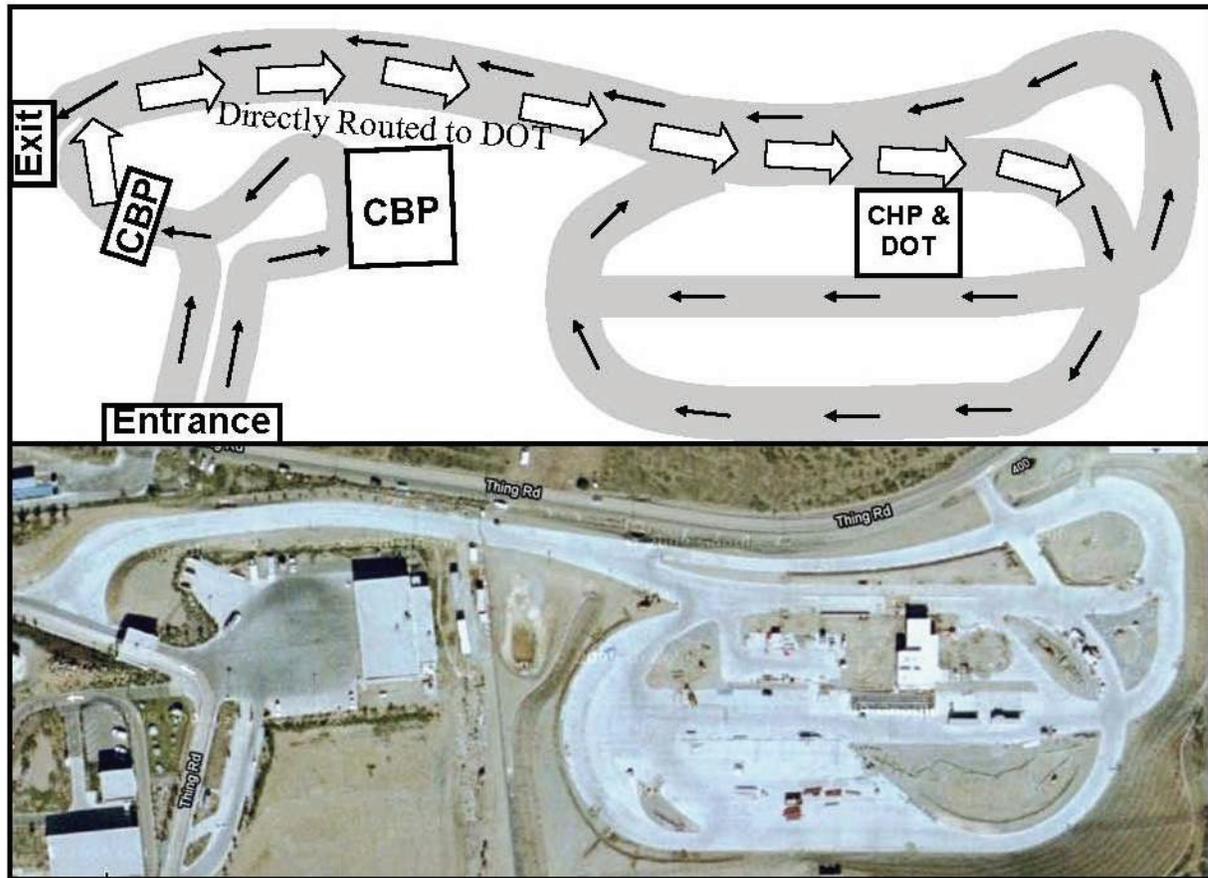
Figure 2. Ysleta Traffic Diagram and Aerial Photo



Under these conditions, additional FMCSA and state procedures are required to ensure pilot program participants are identified and directed to inspection facilities. Those procedures could include placing an FMCSA or state inspector along the route to identify trucks participating in the pilot program and directing them to the Federal or state inspection facility.

On the other hand, some border crossings such as Otay Mesa, California, and Tecate, California, route trucks directly through booths staffed by FMCSA or state officials after they pass through CBP booths. Under these conditions, FMCSA or state officials can easily divert pilot program participants to contained safety inspection locations for required driver and truck checks. Figure 3 is a traffic diagram and an aerial photograph of the Tecate border crossing facility showing direct routing of trucks to the safety inspection facility.

Figure 3. Tecate Traffic Diagram and Aerial Photo



In addition to site-specific plans, FMCSA used quality control measures during the last pilot program, such as comparisons to independent crossing records, to ensure that its system for identifying and inspecting pilot program trucks was effective. These measures included comparing CBP crossing records with FMCSA inspection logs to confirm that project participants were checked at the border. As of June 30, 2011, FMCSA had not updated or developed such measures for the proposed 2011 pilot program.

FMCSA Has Not Established Systems for Verifying Pilot Program Drivers and Vehicles Throughout the United States

FMCSA has not established systems or provided guidance to its field offices, states, and CBP on how to verify pilot program drivers and trucks for inspection as they enter the United States and travel beyond the commercial zones. Federal and state inspectors at the border and state enforcement officials we spoke with in June and August 2011 at eight states outside the border region, which had received the most traffic from participants during the previous pilot program, reported that no guidance had been provided on the new pilot program.

Federal law requires that FMCSA establish systems to verify that drivers and trucks participating in the pilot program comply with Federal requirements. For instance, pilot program participants must designate the drivers and trucks they plan to use in the program, and FMCSA must approve all designated drivers and trucks before long-haul operations start. Any oversight system must be able to properly identify drivers and trucks participating in the pilot program and verify that they meet program requirements.

Section 350(a)(10)(A) requires that motor carriers, including foreign carriers, be knowledgeable about Federal safety standards and be proficient in English. Specifically, Federal rules¹⁵ require drivers to be sufficiently proficient in English to (1) converse with the general public, (2) understand highway traffic signs and signals, (3) respond to official inquiries, and (4) make entries on reports and records.

To reinforce this regulation, on July 20, 2007, FMCSA issued guidance on English language proficiency, which states that the inspector must conduct the interview of the driver in English. The guidance also includes minimum inquiries for the interview and provides strategies for communicating with non-native speakers of English, including examples of driver interview questions. The guidance instructs inspectors to place a driver out of service for failing the test.

The pilot program provisions also require verifying drivers' English language proficiency during PASAs. This requirement necessitates processes for verifying at the border that drivers are approved for the pilot program. FMCSA informed us that it plans to modify its system for electronically verifying drivers' licenses to include data on drivers' English language proficiency.

Section 350(a)(4) requires that a distinctive Department of Transportation (DOT) number be assigned to each motor carrier operating beyond the commercial zone. The DOT number assists inspectors in enforcing the motor carrier safety regulations. FMCSA officials informed us that Mexico-domiciled trucks authorized to operate within the commercial zones would continue to have a DOT number with a "Z" suffix and that pilot program trucks would have a DOT number with an "X" suffix.

Ideally, FMCSA and state inspectors would identify pilot program trucks using an automated system that could route trucks directly to FMCSA or state inspection facilities. FMCSA officials informed us that the electronic equipment it plans to use in pilot program trucks could be used to detect a pilot program truck that is approaching the border crossing. In the absence of such an automated identification system, screening of Mexico-domiciled trucks would need to be

¹⁵ 49 C.F.R. § 391.11(b)(2) (2010).

done visually at the border crossings, as it was during the previous pilot program. Without official guidance, inspection officials may have difficulty enforcing safety regulations when the trucks enter the United States and travel beyond the commercial zones, thereby resulting in increased safety risks and concerns.

FMCSA Has Not Issued an Implementation Plan nor Acquired Electronic Monitoring Devices for Use in the Pilot Program

FMCSA has not issued an implementation plan nor acquired electronic monitoring devices for use in the pilot program, despite its policy that calls for providing this equipment to pilot program participants. FMCSA has also not developed or issued specific guidance on how Federal and state enforcement staff should use such electronic monitoring devices. The pilot program provisions call for electronic monitoring of pilot program trucks to ensure compliance with restrictions on operating within the United States. FMCSA plans to provide such devices to pilot program participants, but will retain ownership of the devices. Pilot program participants would be required to make their trucks available for installation of the electronic monitoring devices in the United States.

FMCSA anticipates that it will award a 1-year contract, with two 1-year renewal options, for the electronic monitoring devices by August 5, 2011. FMCSA expects the contract to cost about \$3.2 million for the electronic monitoring devices and tracking services during FYs 2011 through 2013. FMCSA officials informed us that, in awarding the contract, they will consider factors such as technical specification and approach, experience, management approach, past performance, and price. FMCSA's technical specifications state the electronic monitoring devices for the pilot program must comply with either (i) the electronic on-board recorder requirements of 49 C.F.R. § 395.16 or (ii) automated on-board recording device requirements of 49 C.F.R. § 395.15. According to FMCSA officials, the devices will have the functionality to electronically record driver's hours of service and vehicle positioning.

FMCSA Has Not Trained Staff on Specific Pilot Program Provisions

FMCSA has not provided training to enforcement personnel we met with in May 2011. According to FMCSA's April 2011 Federal Register notice, it was providing ongoing training to Federal and State auditors, inspectors, and investigators on pilot program provision and procedures, including cabotage.¹⁶ During our May 2011 site visits, FMCSA, state, and CBP personnel informed us they had not received training or guidance on conducting PASAs or processing pilot program participants at the border or within the United States. FMCSA

¹⁶ Cabotage is the act of transporting domestic freight between points in the United States by a foreign motor carrier. Federal rules prohibit Mexico-domiciled motor carriers from providing point-to-point transportation services, including express delivery services, within the United States for goods other than international cargo.

would need to provide training on program requirements to Federal and state enforcement personnel before program initiation. Federal and state border officials informed us that, without timely guidance and training, they may not be able to consistently and properly implement the pilot program.

CONCLUSION

The United States and Mexico have agreed to facilitate the cross-border movement of goods and services between the two nations. FMCSA's pilot program would authorize Mexico-domiciled motor carriers to transport cargo throughout the United States, in compliance with the NAFTA cross-border trucking provisions. FMCSA continues to have personnel, facilities, and systems in place to conduct adequate inspections of Mexican drivers and trucks at border crossings. However, additional actions are needed to ensure that drivers and trucks inspected at the border and within the United States comply with the motor carrier safety regulations and other Federal requirements. Without strong controls and processes to monitor the safety performance of Mexico-domiciled motor carriers with long-haul operating authority, FMCSA cannot ensure that the current level of safety on the Nation's highways will be maintained.

RECOMMENDATIONS

Before initiation of the pilot program, the FMCSA Administrator should develop an action plan for inclusion in the Secretary's required report to Congress. This plan should, at a minimum, identify actions for:

1. finalizing plans for how FMCSA will comply with Section 350(a) requirements to conduct half of the PASAs and compliance reviews in Mexico;
2. issuing coordinated site-specific plans, or an alternative overall plan for coordinating with CBP and the states, to ensure that pilot program drivers and trucks are inspected at the border;
3. establishing a system to verify driver and truck eligibility for the pilot program;
4. issuing an implementation plan for using electronic monitoring devices in the pilot program; and
5. conducting pilot program training for inspection and enforcement personnel at the border and within the United States.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

We provided FMCSA a draft of this report for review and comment on August 2, 2011, and received its formal written comments on August 10, 2011. FMCSA's complete response is included as an appendix to this report. FMCSA concurred with our recommendation to develop an action plan for inclusion in its report to Congress prior to starting the pilot program, and expects to submit its report to Congress in September 2011. We consider our recommendation resolved but open pending completion of the planned action.

ACTIONS REQUIRED

Subject to the follow-up provisions in Department of Transportation Order 8000.1C, we request that FMCSA provide information demonstrating completion of its planned actions within 10 days after the action has been taken.

We appreciate the courtesies and cooperation of FMCSA 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: Martin Gertel, DOT Audit Liaison (M-1)

EXHIBIT A. SCOPE AND METHODOLOGY

We conducted our work from April through July 2011 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 objective.

Our overall audit objective was to assess FMCSA's policy, procedures, and processes for granting operating authority to Mexico–domiciled motor carriers under the pilot program and for monitoring and ensuring the carriers' compliance with United States laws and regulations. Specifically, we (1) verified whether FMCSA complied with requirements set forth in Section 350(a) of the 2001 legislation, which included conducting PASAs for Mexico–domiciled carriers seeking long–haul authority and (2) identified issues pertaining to the proposed pilot program that should be addressed before the pilot program is initiated.

To determine if FMCSA met the requirements set forth in 350(a), we identified and reviewed all 34 requirements contained in the Department of Transportation and Related Agencies Appropriations Act, 2002. We compared the 350(a) requirements to provisions stated in the Code of Federal Regulations and Federal Register.

To identify issues that should be addressed before the pilot program is initiated, we reviewed FMCSA's monitoring and enforcement mechanisms and directly observed border inspection operations during site visits at 6 of 23 truck border crossings along the United States–Mexico border—Bridge of the Americas and Ysleta in El Paso, Texas; World Trade Bridge and Columbia Solidarity Bridge in Laredo, Texas; and Otay Mesa and Tecate in San Diego and Tecate, California. We chose five of the six crossings as locations with higher volumes of truck crossings. We chose a sixth location, Tecate, as a lower volume crossing that was also geographically adjacent to another site visit crossing.

During the site visits, we reviewed inspection reports and other documentation, and held interviews with CBP officials, FMCSA inspectors, and state enforcement personnel. The interviews included questions regarding proposed pilot program knowledge and preparedness. We observed inspections of commercial motor vehicles. At all six crossings, we were accompanied by a safety expert with extensive law enforcement experience to provide technical assistance with our work.

We observed inspections and enforcement mechanisms at state truck weigh station facilities in Decatur, Texas, and Dumfries, Virginia. We also judgmentally selected eight states to interview Motor Carrier Safety Assurance Program coordinators to evaluate their readiness to enforce pilot program requirements and to determine whether they had any concerns with mechanisms for monitoring Mexican motor carriers with provisional operating authority. To select the states, we reviewed our analysis of the prior pilot program's final inspection results. We identified all trips outside of the four border states and ranked the number of trips by state. Based on these rankings, we selected the top eight states—Pennsylvania, Illinois, Mississippi, Alabama, Louisiana, North Carolina, Washington, and Colorado.

Finally, we followed up on FMCSA's implementation of outstanding recommendations from our August 2009 NAFTA report that would improve the monitoring of Mexican Federal CDL holders operating in the United States. FMCSA provided information on actions it took towards implementing the prior recommendations, and we plan to verify these actions during our next audit.

EXHIBIT B. SITE VISITS AND CONTACTS MADE

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

Division Offices

Austin, Texas

Richmond, Virginia

Field Offices

San Diego, California

El Paso, Texas

Laredo, Texas

U.S. Department of Homeland Security, Customs and Border Protection

Headquarters Offices, Washington, DC

Office of Field Operations

Office of Intelligence and Operations Coordination

Office of Internal Affairs

Departmental GAO/OIG Liaison Office

Ports of Entry

Otay Mesa, San Diego, California

Tecate, Tecate, California

Bridge of the Americas, El Paso, Texas

Ysleta–Zaragosa Bridge, El Paso, Texas

Columbia Solidarity Bridge, Laredo, Texas

World Trade Bridge, Laredo, Texas

California Highway Patrol

Border Division, Commercial Vehicle Section

Otay Mesa, San Diego

Tecate, Tecate

Texas Department of Public Safety

Commercial Vehicle Enforcement

Columbia Solidarity Bridge, Laredo

World Trade Bridge, Laredo

Ysleta–Zaragosa Bridge, El Paso

Compliance Review Program

Decatur Weigh Station, Decatur

Virginia State Police

Commercial Vehicle Enforcement

Dumfries Weigh Station, Dumfries

State Inspection Readiness Interviews

Alabama Department of Public Safety

Colorado State Patrol

Illinois State Police

Louisiana State Police

Mississippi Highway Safety Patrol

North Carolina State Highway Patrol

Pennsylvania State Police

Washington State Patrol

Commercial Vehicle Safety Alliance

Office of the Executive Director, Greenbelt, Maryland

**EXHIBIT C. REQUIREMENTS OF PUBLIC LAW 107-87,
SECTION 350(a)**

No.	Section 350 Reference	Requirement Language
	§350(a)	(a) No funds limited or appropriated in this Act may be obligated or expended for the review or processing of an application by a Mexican motor carrier for authority to operate beyond United States municipalities and commercial zones on the United States-Mexico border until the Federal Motor Carrier Safety Administration—
1	§350(a)(1)(A)	requires a safety examination of such motor carrier to be performed before the carrier is granted conditional operating authority to operate beyond United States municipalities and commercial zones on the United States-Mexico border;
	§350(a)(1)(B)	requires the safety examination to include—
2	§350(a)(1)(B)(i)	verification of available performance data and safety management programs;
3	§350(a)(1)(B)(ii)	verification of a drug and alcohol testing program consistent with part 40 of title 49, Code of Federal Regulations;
4	§350(a)(1)(B)(iii)	verification of that motor carrier’s system of compliance with hours-of-service rules, including hours-of service records;
5	§350(a)(1)(B)(iv)	verification of proof of insurance;
6	§350(a)(1)(B)(v)	a review of available data concerning that motor carrier’s safety history, and other information necessary to determine the carrier’s preparedness to comply with Federal Motor Carrier Safety rules and regulations and Hazardous Materials rules and regulations;
7	§350(a)(1)(B)(vi)	an inspection of that Mexican motor carrier’s commercial vehicles to be used under such operating authority, if any such commercial vehicles have not received a decal from the inspection required in subsection (a)(5);
8	§350(a)(1)(B)(vii)	an evaluation of that motor carrier’s safety inspection, maintenance, and repair facilities or management systems, including verification of records of periodic vehicle inspections;
9	§350(a)(1)(B)(viii)	verification of drivers’ qualifications, including a confirmation of the validity of the Licencia de Federal de Conductor of each driver of that motor carrier who will be operating under such authority; and
10	§350(a)(1)(B)(ix)	an interview with officials of that motor carrier to review safety management controls and evaluate any written safety oversight policies and practices.
	§350(a)(1)(C)	requires that—
11	§350(a)(1)(C)(i)	Mexican motor carriers with three or fewer commercial vehicles need not undergo on-site safety examination; however 50 percent of all safety examinations of all Mexican motor carriers shall be conducted onsite; and
12	§350(a)(1)(C)(ii)	such on-site inspections shall cover at least 50 percent of estimated truck traffic in any year.
13	§350(a)(2)	requires a full safety compliance review of the carrier consistent with the safety fitness evaluation procedures set forth in part 385 of title 49, Code of Federal Regulations, and gives the motor carrier a satisfactory rating, before the carrier is granted permanent operating authority to operate beyond United States municipalities and commercial zones on the United States-Mexico border, and requires that any such safety compliance review take place within 18 months of that motor carrier being granted conditional operating authority, provided that—

No.	Section 350 Reference	Requirement Language
14	§350(a)(2)(A)	Mexican motor carriers with three or fewer commercial vehicles need not undergo onsite compliance review; however 50 percent of all compliance reviews of all Mexican motor carriers shall be conducted on-site; and
15	§350(a)(2)(B)	any Mexican motor carrier with 4 or more commercial vehicles that did not undergo an on-site safety exam under (a)(1)(C), shall undergo an on-site safety compliance review under this section.
16	§350(a)(3)	requires Federal and State inspectors to verify electronically the status and validity of the license of each driver of a Mexican motor carrier commercial vehicle crossing the border;
17	§350(a)(3)(A)	for every such vehicle carrying a placardable quantity of hazardous materials;
18	§350(a)(3)(B)	whenever the inspection required in subsection (a)(5) is performed; and
19	§350(a)(3)(C)	randomly for other Mexican motor carrier commercial vehicles, but in no case less than 50 percent of all other such commercial vehicles.
20	§350(a)(4)	gives a distinctive Department of Transportation number to each Mexican motor carrier operating beyond the commercial zone to assist inspectors in enforcing motor carrier safety regulations including hours-of-service rules under part 395 of title 49, Code of Federal Regulations;
21	§350(a)(5)	requires, with the exception of Mexican motor carriers that have been granted permanent operating authority for three consecutive years—
22	§350(a)(5)(A)	inspections of all commercial vehicles of Mexican motor carriers authorized, or seeking authority to operate beyond United States municipalities and commercial zones on the United States-Mexico border that do not display a valid Commercial Vehicle Safety Alliance inspection decal, by certified inspectors in accordance with the requirements for a Level I Inspection under the criteria of the North American Standard Inspection (as defined in section 350.105 of title 49, Code of Federal Regulations), including examination of the driver, vehicle exterior and vehicle under-carriage;
23	§350(a)(5)(B)	a Commercial Vehicle Safety Alliance decal to be affixed to each such commercial vehicle upon completion of the inspection required by clause (A) or a re-inspection if the vehicle has met the criteria for the Level I inspection; and
24	§350(a)(5)(C)	that any such decal, when affixed, expire at the end of a period of not more than 90 days, but nothing in this paragraph shall be construed to preclude the Administration from requiring reinspection of a vehicle bearing a valid inspection decal or from requiring that such a decal be removed when a certified Federal or State inspector determines that such a vehicle has a safety violation subsequent to the inspection for which the decal was granted.
25	§350(a)(6)	requires State inspectors who detect violations of Federal motor carrier safety laws or regulations to enforce them or notify Federal authorities of such violations;
26	§350(a)(7)(A)	equips all United States-Mexico commercial border crossings with scales suitable for enforcement action; equips 5 of the 10 such crossings that have the highest volume of commercial vehicle traffic with weigh-in-motion (WIM) systems; ensures that the remaining 5 such border crossings are equipped within 12 months; requires inspectors to verify the weight of each Mexican motor carrier commercial vehicle entering the United States at said WIM equipped high volume border crossings; and
27	§350(a)(7)(B)	initiates a study to determine which other crossings should also be equipped with weigh-in-motion systems;

No.	Section 350 Reference	Requirement Language
28	§350(a)(8)	the Federal Motor Carrier Safety Administration has implemented a policy to ensure that no Mexican motor carrier will be granted authority to operate beyond United States municipalities and commercial zones on the United States-Mexico border unless that carrier provides proof of valid insurance with an insurance company licensed in the United States;
29	§350(a)(9)	requires commercial vehicles operated by a Mexican motor carrier to enter the United States only at commercial border crossings where and when a certified motor carrier safety inspector is on duty and where adequate capacity exists to conduct a sufficient number of meaningful vehicle safety inspections and to accommodate vehicles placed out-of-service as a result of said inspections.
	§350(a)(10)	publishes—
30	§350(a)(10)(A)	interim final regulations under section 210(b) of the Motor Carrier Safety Improvement Act of 1999 (49 U.S.C. 31144 note) that establish minimum requirements for motor carriers, including foreign motor carriers, to ensure they are knowledgeable about Federal safety standards, that may include the administration of a proficiency examination;
31	§350(a)(10)(B)	interim final regulations under section 31148 of title 49, United States Code, that implement measures to improve training and provide for the certification of motor carrier safety auditors;
32	§350(a)(10)(C)	a policy under sections 218(a) and (b) of that Act (49 U.S.C. 31133 note) establishing standards for the determination of the appropriate number of Federal and State motor carrier inspectors for the United States-Mexico border;
33	§350(a)(10)(D)	a policy under section 219(d) of that Act (49 U.S.C. 14901 note) that prohibits foreign motor carriers from leasing vehicles to another carrier to transport products to the United States while the lessor is subject to a suspension, restriction, or limitation on its right to operate in the United States; and
34	§350(a)(10)(E)	a policy under section 219(a) of that Act (49 U.S.C. 14901 note) that prohibits foreign motor carriers from operating in the United States that is found to have operated illegally in the United States.

EXHIBIT D. PRIOR AUDIT COVERAGE

In addition to the reporting requirements in the 2007 legislation, the 2001 legislation requires annual audits of specified criteria. Our last NAFTA audit report, issued in August 2009,¹⁷ identified two overarching issues. First, states inconsistently reported traffic convictions incurred by holders of Mexican driver's licenses to the MCDB and Federal law does not require the states to report these convictions. Traffic conviction reporting requirements and monitoring procedures made it difficult to account for the possibility that Mexican Federal CDL holders operating in the United States could also legally hold another Mexican-issued driver's license. Inconsistent reporting or monitoring problems made the system vulnerable to incomplete information or delays. As a result, any conviction information that is not reported or delayed could result in Mexican Federal CDL holders continuing to drive in the United States after incurring a disqualifying traffic offense. Second, performing safe and efficient bus inspections at border crossings continued to be a challenge for FMCSA, as buses were less likely to be subject to inspections at non-commercial crossings not fully staffed by inspectors; and, at two non-commercial crossings, bus inspection space was unsafe due to the proximity to moving traffic.

We made three recommendations to address improvements needed in the monitoring of Mexican Federal CDL holders. Specifically, we recommended that FMCSA (a) develop and implement a timely report that identifies state data inconsistencies in the MCDB, and assign in the MCDB data quality control plan the responsibilities to address and follow up on data inconsistencies; (b) assess whether legislative, regulatory, or MCDB system changes are needed to ensure the consistent reporting and matching of different categories of traffic convictions, including convictions in non-commercial vehicles and convictions occurring under various types of Mexican-issued licenses; and (c) develop an action plan for implementing identified changes in the monitoring process, based on assessment results. FMCSA has addressed these three CDL-related recommendations. We also made two additional recommendations, which remain open, to improve capacity to perform commercial bus inspections, but these recommendations are not applicable to FMCSA's pilot program.

In addition to the August 2009 audit, OIG has issued numerous reports on cross-border trucking issues.

- OIG Report Number MH-2009-034, "Status Report on NAFTA Cross-Border Trucking Demonstration Project," February 6, 2009.

¹⁷ OIG Report Number MH-2009-068, "Follow-Up Audit of the Implementation of the North American Free Trade Agreement's (NAFTA) Cross-Border Trucking Provisions," August 17, 2009.

- OIG Report Number MH-2008-081, “Report on the Scope and Methodology of FMCSA’S Review of Canadian/Mexican Compliance with Federal Commercial Motor Vehicle Safety Standards,” September 24, 2008.
- OIG Report Number MH-2008-040, “Interim Report on NAFTA Cross-Border Trucking Demonstration Project,” March 10, 2008.
- OIG Report Number MH-2007-065, “Issues Pertaining to the Proposed NAFTA Cross-Border Trucking Demonstration Project,” September 6, 2007.
- OIG Report Number MH-2007-062, “Follow-up Audit on the Implementation of the North American Free Trade Agreement’s Cross-Border Trucking Provisions,” August 6, 2007.
- OIG Report Number MH-2005-032, “Follow-Up Audit of the Implementation of the North American Free Trade Agreement’s (NAFTA) Cross-Border Trucking Provisions,” January 3, 2005.
- OIG Report Number MH-2003-041, “Follow-Up Audit on the Implementation of Commercial Vehicle Safety Requirements at the U.S.-Mexico Border,” May 16, 2003.
- OIG Report Number MH-2002-094, “Implementation of Commercial Vehicle Safety Requirements at the U.S.-Mexico Border,” June 25, 2002.
- OIG Report Number MH-2001-096, “Motor Carrier Safety at the U.S.-Mexico Border,” September 21, 2001.
- OIG Report Number MH-2001-059, “Status of Implementing the North American Free Trade Agreement’s Cross-Border Trucking Provisions,” May 8, 2001.
- OIG Report Number TR-2000-013, “Mexico-Domiciled Motor Carriers,” November 4, 1999.
- OIG Report Number TR-1999-034, “Motor Carrier Safety Program for Commercial Trucks at United States Borders,” December 28, 1998.

EXHIBIT E. MAJOR CONTRIBUTORS TO THIS REPORT

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APPENDIX. AGENCY COMMENTS



U.S. Department
Of Transportation

**Federal Motor Carrier
Safety Administration**

Memorandum

Subject: **INFORMATION:** Response to the OIG Draft Report "FMCSA Generally Complies With Statutory Requirements, But Actions Are Needed Prior To Initiating Its NAFTA Cross-Border Trucking Pilot Program"
Project No. 11M3003MOOO

Date: August 10, 2011

From: Anne S. Ferro
Administrator

**Reply to
Attn of:** MC-E

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

The Federal Motor Carrier Safety Administration (FMCSA) recognizes the critically important responsibilities it has been given with regard to implementing the provisions of law tasking it with providing effective oversight of the safety of truck operations by Mexico-domiciled motor carriers in the United States under the scope of the pilot program. The FMCSA has demonstrated that it is up to the task by its established track record of effective actions in this regard to date. The Agency has already completed many actions that are necessary to fulfill the requirements prior to beginning these operations, including publishing a policy memorandum on conducting Pre-Authority Safety Audits (PASA), training its field staff on the new PASA policies during July and early August, and soliciting proposals for the electronic monitoring devices to be used during the program. The FMCSA is working hard to fulfill the remaining requirements as quickly and effectively as possible. Most recently, FMCSA completed several key elements in July, including a Memorandum of Understanding with Mexico concerning the pilot program and consideration of public input with regard to the proposed pilot program. These were critical precursors to accomplishing the process specific requirements discussed in the Office of Inspector General's (OIG) draft report. The Agency is now working to accomplish these final details. Overall, the Agency has established sufficient mechanisms to ensure that Mexico-domiciled motor carriers granted long-haul authority comply with Federal motor carrier safety laws and regulations.

RECOMMENDATION AND RESPONSE

RECOMMENDATION 1. Before initiation of the pilot program, the FMCSA Administrator should develop an action plan for inclusion in the Secretary's required report to Congress. This plan should, at a minimum, identify actions for:

1. Finalizing plans for how FMCSA will comply with Section 350(a) requirements to conduct half of the PASAs and compliance reviews in Mexico;
2. Issuing coordinated site-specific plans, or an alternative overall plan for coordinating with U.S. Customs and Border Protection (CBP) and the States, to ensure that pilot program drivers and trucks are inspected at the border;
3. Establishing a system to verify driver and truck eligibility for the pilot program;
4. Issuing an implementation plan for using electronic monitoring devices in the pilot program; and
5. Conducting pilot program training for inspection and enforcement personnel at the border and within the United States.

RESPONSE: CONCUR. The FMCSA will ensure that the Secretary's report to Congress addresses each of the requirements enumerated by law, and specifically, those elements included in the recommendation. The Agency anticipates that the report to Congress will be issued prior to the end of September 2011 and has actions underway or planned in each of these areas. For example, FMCSA has:

- Initiated training for its field staff on conducting the PASA in accordance with FMCSA regulations and enhanced oversight mechanisms outlined in the Agency's July 8 Federal Register notice announcing the pilot program.
- Has had an extensive discussion with States about the type and format of training for enforcement personnel.
- Begun reviewing proposals for electronic monitoring equipment and will issue guidance and conduct training on the equipment and the oversight plans prior to initiating the pilot program. The capabilities of this equipment will also allow FMCSA to finalize the plans for ensuring proper inspections at the border and coordinating activities with CBP and our State partners.
- Started programming changes for its Query Central program that will allow Federal and State inspectors to ensure Mexican drivers and vehicles have been approved for the pilot program during roadside inspections.
- Reviewed procedures for its field staff to use when traveling to Mexico for conducting PASA and compliance reviews and will comply with all the legal requirements for conducting reviews in Mexico.

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The FMCSA appreciates the opportunity to review the OIG draft report and recognizes the extensive and detailed efforts of the OIG over the course of this audit. The Agency has already put these efforts to good use and will continue to rely upon the OIG findings as we move forward in our efforts. Should you have any questions, comments, or need additional information, please contact William Quade, Associate Administrator for Enforcement and Program Delivery, at 202-366-2172 or by email at william.quade@dot.gov.

Appendix. Agency Comments