



GUIDELINES FOR COMPLIANCE OF COMMERCIAL MOTOR VEHICLES (CMV) AND CMV DRIVERS ENGAGED IN CROSS-BORDER TRAFFIC

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Guidelines for Compliance of Commercial Motor Vehicles (CMV) and CMV Drivers Engaged in Cross-Border Traffic

Summary

The following provides general information for the movement of goods and immigration requirements for commercial motor vehicles (CMV) and CMV operators engaged in cross-border traffic. Operators in violation of applicable requirements or who cannot provide the appropriate documentation may be in violation of the North American Free Trade Agreement (NAFTA), and other U.S. laws. Suspected violations should be reported to U.S. Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP).

Cabotage General Principles

- Cabotage refers to the point-to-point transportation of property or passengers within one country.
- Goods transported by commercial vessel, vehicle or aircraft across the United States border must be entering or leaving the United States, and remain in the stream of international commerce.
- Drivers may be admitted to deliver or pick up cargo traveling in the stream of international commerce, i.e., the cargo is entering or leaving the United States.

Immigration Requirements

Foreign national truck drivers may qualify for admission as B-1 visitors for business to pick up or deliver cargo traveling in the stream of international commerce as explained more fully below.

1. Truck drivers must meet the general entry requirements as a visitor for business (B-1 classification). Thus, the truck driver must:
 - a) Have a residence in a foreign country which he or she has no intention of abandoning;
 - b) Intend to depart the United States at the end of the authorized period of temporary admission;
 - c) Have adequate financial means to carry out the purpose of the visit to, and departure from, the United States; and
 - d) Establish that he or she is not inadmissible to the United States, including for health-related reasons, criminal convictions, or previous immigration violations.
2. Truck drivers may only transport cargo traveling in the stream of international commerce within the meaning of U.S. immigration law. The intent of the transportation operator provision of NAFTA is to allow the free movement of goods across the border, an activity that is international in scope, but not to facilitate access to the domestic labor market. Set forth below are examples of the distinction between domestic and international movements.

Permissible movements for the driver:

- Drivers may deliver a shipment from Canada/Mexico to one or more U.S. locations.
- Drivers may then pick up a return shipment from one or more U.S. locations for delivery to Canada/Mexico (generally must be pre-arranged).
- Drivers may deliver a shipment from Canada/Mexico to a U.S. location, deadhead with the same trailer to another U.S. location, and live load that trailer for delivery to Canada/Mexico.
- Drivers may deliver a shipment from Canada/Mexico to a U.S. location, deadhead with the same trailer to another location, drop the empty trailer and pick up a second loaded trailer for delivery to Canada/Mexico.
- Drivers may deliver a shipment from Canada to a U.S. location, pick up the empty trailer and deadhead that trailer to another U.S. location where the trailer is live loaded for delivery to Canada/Mexico.
- Drivers may also drop a loaded trailer from Canada/Mexico at one location in the U.S., and drive an empty tractor to another location to pick up a loaded trailer for transport to Canada/Mexico.
- Relay drivers may drive entirely domestic segments of an international delivery if the driver the delivery meets two conditions: 1) the driver must be employed by the same company as the delivery; and 2) the domestic portion of the trip is a necessary incident to the international nature of the trip. Relaying is permitted in order for drivers to comply with Federal regulations regarding the number of consecutive hours an individual is permitted to drive. They need not enter with the vehicle, but must enter within a reasonable period.
- Drivers may perform activities that are “necessary incidents” of international commerce, such as loading and unloading international cargo.

In each situation above, each trailer must be used only in delivering goods either to or from the United States.

Movements not permitted for the driver:

- Drivers may not pick up a shipment at one U.S. location and deliver that shipment to another U.S. location.
 - Drivers may not reposition an empty trailer between two points in the United States when the driver did not either enter with or depart with that trailer.
 - Drivers may not “top up” an international shipment with U.S. domestic shipments.
 - Drivers may not solicit shipments for domestic deliveries while in the United States.
3. All truck drivers must go through the normal inspection process at the port of entry. Every driver/passenger must have the requisite immigration documentation.

In addition to the particularized requirements for the entry of their vehicles (discussed below), drivers must also meet the documentary requirements under the Western Hemisphere Travel Initiative (or, to the extent applicable, those requirements applicable to aliens who are not citizens of Canada or Mexico).

- a) **Canadian citizens** entering the United States as visitors for business at a land port of entry must present one of the following: a Canadian passport, an enhanced driver's license or enhanced identification card, or an enrollment card from a DHS trusted traveler program (NEXUS, FAST/Expres or SENTRI). There are certain limited exceptions for individuals such as children or boaters which are not generally applicable here. Canadian citizens are not required to obtain a B visa prior to seeking admission in that status at a U.S. port of entry.
- b) **Mexican citizens** entering the United States as visitors for business are required to present a valid passport and nonimmigrant visa. Mexican citizens may present either a traditional B-1/B-2 visa or a Form DSP-150 Border Crossing Card, which also may be used as a B-1/B-2 visa.

All trucks and all drivers entering the U.S. are inspected and screened by CBP Officers at each and every crossing. This inspection may include a number of elements including document verification, radiation portal monitoring and/or x-ray inspections of certain cargo. In addition, all vehicles are subject to inspection by the U.S. Department of Transportation (DOT) or State CMV enforcement agency at any time.

- 4. Federal statutes require that commercial drivers licensed in Canada or Mexico may not transport hazardous materials (hazmat), including explosives, within the United States unless they have undergone a background check similar to that required for U.S. operators with a hazmat endorsement (HME).¹

In order to comply with Federal statutes, drivers licensed in Canada or Mexico are required to undergo a background check similar to the one required of U.S. licensed operators who have an HME on their commercial drivers' licenses.² Canadian and Mexican drivers may satisfy this requirement by either having a valid **Transportation Worker Identification Credential (TWIC) card**³ or satisfactorily completing a background check under the U.S. Customs and Border Protection's **(CBP) Free and Secure Trade (FAST) program**.⁴ Any driver must comply with this requirement before crossing the border and transporting placarded amounts of hazmat⁵ in the United States.

¹See the Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users Act (SAFETEA-LU), Pub. L. No. 109-59 (2006). In 2004, TSA initiated the Hazmat Threat Assessment Program, which requires commercial truck drivers applying to obtain, renew or transfer the hazardous materials endorsement (HME) on their state-issued commercial drivers licenses (CDL) to undergo security threat assessments conducted by TSA. To obtain an HME, applicants must provide biographical and biometric information.

² See 49 CFR 1572.201.

³ TWIC was established by Congress through the Maritime Transportation Security Act of 2002 (MTSA), Pub. L. No. 107-295, and is administered by the Transportation Security Administration (TSA) and U.S. Coast Guard. TWICs are tamper-resistant biometric credentials issued to workers who require unescorted access to secure areas of ports, vessels, outer continental shelf facilities and all credentialed merchant mariners. Over 1 million workers including longshoremen, truckers, port employees and others are required to obtain a TWIC.

⁴ The FAST program is a cooperative effort among CBP and the governments of Canada and Mexico to coordinate processes for the clearance of commercial shipments at the border. Northern and southern border FAST driver cards are valid at any CBP land border crossing where the technology currently exists. Information on the application process may be found on the CBP Web site at www.cbp.gov.

⁵ See 49 CFR part 172.

If a Mexican or Canadian commercial driver is transporting placarded quantities of hazmat and does not have a FAST card or TWIC in his/her possession, in addition to the Canadian or Mexican equivalent of an HME, the driver should be treated the same as a domestic commercial driver who is operating without the appropriate permits or credentials.

More information on the TWIC or FAST program is available at:

TSA's Transportation Worker Identification Credential
http://www.tsa.gov/what_we_do/layers/twic/index.shtm

CBP's Free and Secure Trade Program
http://www.cbp.gov/xp/cgov/trade/cargo_security/ctpat/fast/

DOT Requirements

The DOT log book is a daily calendar that is divided up in half-hour increments showing the point-to-point driving of the driver. This includes the Hours of Service Rules:

- May drive 11 hours, following 10 hours off-duty.
- May not drive beyond the 14th hour after coming-on duty, following 10 hours off-duty.
- May not drive after 60/70 hours on-duty in 7/8 consecutive days.
- A driver may restart a 7/8 consecutive day period after taking 34 or more consecutive hours off-duty.

16-Hour Exception For Property-Carrying Drivers

Drivers may extend the 14-hour on-duty period by 2 additional hours IF THEY:

- Are released from duty at the normal work reporting location for the previous 5 duty tours; AND
- Return to their normal work reporting location and are released from duty within 16 hours; AND
- Have not used this exception in the previous 6 days, except following a 34-hour restart of a 7/8-day period.
- Total hours driving may not exceed 11 hours.

For additional information see:

DOT: <http://www.fmcsa.dot.gov/rules-regulations/topics/hos/hos-2005.htm>

Noncompliance Reporting

State and local law enforcement personnel should contact federal authorities to report noncompliance with cross-border trucking law. Law enforcement and members of the public should report suspected noncompliance to the following authorities:

- Immigration and Customs Enforcement's tip line either online at www.ice.gov/tips or by call to 1-866-347-2423;
- Customs and Border Protection's tip line either online at http://www.cbp.gov/xp/cgov/trade/trade_programs/e_allegations/ or by call to 1-800-BE-ALERT (232-5378).

Frequently Asked Questions

Q. A Canadian driver is taking a shipment from Canada for delivery to a point in the United States. The dispatcher has been notified of a shipment destined to Canada that is located in another state. May the driver take an empty trailer (deadhead) from the delivery point to the other state to pick up the shipment and deliver it to Canada? Consider also the same scenario for a Mexican driver traveling from Mexico.

A. A driver may deadhead a trailer from one location to another within the United States PROVIDED the deadhead trailer is either the one the driver came in with or the one he or she is departing with. The driver may not haul an empty trailer from one location to drop it off at another location.

Q. Under what circumstances may a driver enter the United States with an empty tractor?

A. 1) A driver may be admitted to the United States with an empty tractor to pick up a trailer for delivery to Canada or Mexico.

A. 2) The driver may be admitted to the United States with an empty tractor to pick up a loaded trailer but may not enter with an empty trailer, pick up goods at any point in the United States (including those goods not yet cleared through Customs) and deliver them to points within the United States.

Q. Does the driver have to depart with the same trailer with which he or she entered the United States?

A. No. If a truck driver is admitted to the United States as a B-1 visitor for business, the driver may drop a trailer at one location and pick up a loaded trailer for delivery back to Mexico or Canada. However, he may not simply transport an empty trailer from one point to another within the United States.

Q. May a foreign driver taking a shipment from the United States to Canada also take merchandise destined to another point in the United States since it is on the way?

A. Not if the driver is admitted as a B-1 nonimmigrant. A driver may not enter with an empty trailer, pick up goods at any point in the United States (including those goods not yet cleared through Customs) and deliver them to points within the United States. The driver may only take goods loaded in the United States to Canada or Mexico. However, a driver may take goods loaded in Canada or Mexico and deliver them at multiple points throughout the United States.

Q. May a driver perform associated functions such as loading and unloading cargo?

A. The driver may perform a function that is a necessary incident to international commerce.

Loading and unloading international cargo that is merely incidental to the primary purpose of transporting goods into or out of the United States is permitted.

Q. May a U. S. carrier employ foreign drivers?

A. The question of who employs a foreign driver seeking admission as a temporary visitor for business is one of many factors to consider in evaluating whether the driver may be admitted for immigration purposes. Such a driver must have an established foreign residence that he or she does not intend to abandon and must otherwise be admissible. If the truck driver is admitted as a temporary visitor for business he or she may not engage in point to point hauling within the United States, irrespective of who employs him.

Federal Motor Carrier Safety Administration's
U.S.-Mexico Cross-Border Trucking Pilot Program

- The Department of Transportation is conducting a three year-long pilot program that expands cross border trucking operations with Mexico. The program began October 14, 2011.
- This pilot program was designed to simplify a process that currently requires Mexican truckers to stop and wait for U.S. trucks to arrive and transfer cargo.
- U.S. trucks will get to make deliveries in Mexico while a select group of Mexican trucking companies will be allowed to make deliveries beyond the 20-25 mile commercialized zone currently in place along the Southwest border.
- The DOT has put in place a rigorous inspection program to ensure safe operation of Mexican trucks crossing the border.
- Approximately 540 federal and state inspectors will conduct in-person safety audits and inspections to make sure participating Mexican companies comply with U.S. safety regulations as well as be insured with a U.S. licensed firm.
- The regulations require all Mexican truck drivers to hold a valid U.S. or Mexican commercial driver's license and comply with all U.S. hours-of-service rules and be able to understand questions and directions in English.
- Companies that meet these standards will be allowed to make international pick up and deliveries only and will not be able to move goods from one U.S. location to another, haul hazardous material or transport passengers.

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